2452

# SUPREME COURT OF THE UNITED STATES.

## No. 135.

JOSEPH PENNOCK AND NATHAN F. HART, APPELLANTS,

vs.

GEORGE S. COE, TRUSTEES, &c.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF OHIO.

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GIDEON, print.

UNITED STATES OF AMERICA, *ss.*

To George S. Coe, Trustee, &c., Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the next ensuing term thereof, pursuant to an appeal from a decree of the circuit court of the United States for the northern district of Ohio, wherein Joseph S. Pennock and Nathan F. Hart are appellants, and you are appellee, to show cause, if any there be, why the said decree should not be corrected, and speedy justice be done to the parties in that behalf, said appellants having filed the security required by law.

Witness the Honorable Hiram V. Willson, one of the judges of the circuit court of the United States for the northern district of Ohio, in the seventh circuit, at the city of Cleveland, this 16th day of November, A. D. 1857.

H. V. WILLSON, *U. S. Dist. Judge.*

Filed November 17th, 1857.

F. W. GREEN, *Clerk.*

Received copy of the within citation this 17th day of November, 1857. OTIS, COFFINBURY, & WYMAN,

*Att'ys for Geo. S. Coe, Appellee.*

Circuit Court of the United States for the northern district of Ohio.

At an adjourned and special term of the circuit court of the United States for the northern district of Ohio, in the seventh circuit, begun and held at the city of Cleveland, in said district, on the second Tuesday in the month of September, being eighth day of that month, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-second.

Present, the Honorable John McLean and the Honorable Hiram V. Willson, judges of said court.

Among other proceedings then and there had were the following, to wit:

| | |
|---|---|
| GEORGE S. COE, Trustee, &c., vs. JOSEPH PENNOCK, NATHAN F. HART, and the Cleveland, Zanesville and Cincinnati Railroad Company. | No. 331.—In Chancery. |

Be it remembered, that heretofore, to wit, on the ninth day of September, in the year one thousand eight hundred and fifty-six, the said complainant, by his solicitors, filed in said court his bill in this cause, which is in the words and figures following, to wit:

To the honorable the judges of the circuit court of the United States for the northern district of Ohio.

George S. Coe, of the city of New York, and a citizen of the

2457

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GEORGE S. COE, Trustee, &c., vs. JOSEPH PENNOCK, NATHAN F. HART, and the Cleveland, Zanesville and Cincinnati Railroad Company. } No. 331.—In Chancery.

Be it remembered, that heretofore, to wit, on the ninth day of September, in the year one thousand eight hundred and fifty-six, the said complainant, by his solicitors, filed in said court his bill in this cause, which is in the words and figures following, to wit:

To the honorable the judges of the circuit court of the United States for the northern district of Ohio.

George S. Coe, of the city of New York, and a citizen of the

State of New York, brings this his bill against Joseph Pennock and Nathan F. Hart, citizens and residents of the State of Pennsylvania, and the Cleveland, Zanesville and Cincinnati Railroad Company, a body corporate and politic, created by the laws of the State of Ohio, and having its principal office and place of business at Akron, in the county of Summit, and within the northern district of the State of Ohio.

And thereupon your orator complains and says, that the Cleveland, Zanesville and Cincinnati Railroad Company, a body corporate and politic, created by the laws of the State of Ohio, and having its principal office or place of business at Akron, in the county of Summit, and within the northern district of the State of Ohio, on the first day of April, 1852, in pursuance of the authority conferred upon said company by law, and for the purpose of borrowing money to construct and equip its road then in the course of construction from Hudson, in said county of Summit, to Millersburgh, in the county of Holmes, executed and issued five hundred bonds of the denomination of one thousand dollars each, payable ten years from the date thereof, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, on the first day of each April and of each October ensuing the date thereof, until said principal sum shall be paid; that the said complainant received the money on said bonds from various individuals for the purposes aforesaid, and to secure the payment of said bonds and interest, and in consideration of the sum of one dollar paid to said company by your orator, the said company granted, bargained, sold, transferred and conveyed, by its deed duly executed, to your orator and his successors, in the trust thereby created and assigned, all the following present and future to be acquired property of the company—that is to say, its road, made or to be made, including the right of way, and the land occupied thereby, together with the superstructure and tracks thereon, and all rails and other materials used therein, or procured therefor, inclusive of the iron rails and equipment procured or to be procured, or paid for with the above described bonds, or the money obtained therefor; bridges, viaducts, culverts, fences, depot grounds, and buildings thereon; engines, tenders, cars, tools, machinery, materials, contracts, and all other personal property, right thereto, and interest therein, together with the tools, rents or income to be had therefrom, and all franchises, rights and privileges of said company in, to or concerning the same: to have and to hold the said premises and every part thereof, with the appurtenances, unto your orator, his successors in said trust and assigns, upon the following trusts—that is to say, in case the said company should fail to pay the principal, or any part thereof, or any of the interest on any of said bonds, at any time when the same may become due and payable, according to the tenor and effect thereof, when demanded, then, after sixty days from such default, upon the request of the holders of such bonds, your

orator, his successors in said trust or assigns, might enter into and take possession of all or any part of said premises, and, as the attorney in fact or agent of said company, by himself or agents, or substitutes duly constituted, have, use, and employ the same, making, from time to time, all needful repairs, alterations and additions thereto, and after deducting the expenses of such use, repairs, alterations and additions, apply the proceeds thereof to the payment of the principal and interest of all of said bonds remaining unpaid, or your orator, his successors in said trust, or assigns, at his or their discretion, might, or on the written request of the holders of at least one-half of the bonds then unpaid and unconverted into stock, cause said premises, or so much thereof as might be necessary to pay and discharge the principal and interest of all of said bonds as might then be unpaid and unconverted as aforesaid, to be sold at public auction in the city of Cleveland, in the State of Ohio, or in the city of New York, giving at least forty days' notice of the time, place, or terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation, in each of the cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which shall be a bar against the said company, its successors and assigns, and all persons claiming under said company, of all right, interest or claim in or to said premises, or any part thereof; and that your orator should, after deducting from the proceeds of said sale the costs and expenses thereof and of managing such property, apply so much of the proceeds as might be necessary to the payment of said principal and interest due and unpaid on said bonds, and should restore to said company the residue thereof, it being expressly understood that no claim or advantage should be taken of any valuation appraisement or extension law by said company nor of any injunction or stay of proceedings, nor should any process be applied for or obtained by said company to prevent such entry or sale as aforesaid.

And the said company therein and thereby covenanted, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyance of the premises, or any part thereof, to your orator, his successors in said trust and assigns, for more fully carrying into effect the objects of said conveyance, particularly for the conveyance of any property acquired by said company, subsequently to the date of said conveyance, and comprehended in the description contained in said deed; and the said company therein and thereby covenanted with your orator, that the money borrowed for the purposes aforesaid, upon the security of said bonds, should be faithfully applied to said purposes, and the expenses attending said loan, and to no other purpose or purposes whatever, and that said company would proceed to construct and equip said road with due diligence, until the same should be finished.

And your orator says that he accepted said trust, and forthwith caused said deed of conveyance to be duly recorded in the counties of Summit, Wayne and Holmes, in said State of Ohio, into and through which said road runs; and that the said company diligently and faithfully applied the money received upon said bonds to the construction and equipment of said road until the same was constructed from Hudson to Millerburgh aforesaid, and had procured and placed upon said road, for the purpose of equipping the same, one locomotive and tender called the Hercules, another called the Vulcan, and another called the Akron; five passenger cars, Nos. 1, 3, 4, 5 and 6; two baggage cars, Nos. 1 and 2; eighteen platform cars, Nos. 11, 9, 21, 16, 15, 3, 22, 4, 7, 19, 6, 20, 42, 2, 23, 8, 30 and 25; sixty-nine gravel cars, Nos. 63, 71, 67, 10, 6, 2, 72, 58, 59, 73, 74, 78, 38, 12, 8, 4, 11, 3, 65, 31, 30, 70, 69, 94, 87, 34, 35, 66, 36, 7, 76, 68, 60, 61, 24, 15, 27, 26, 25, 23, 21, 22, 32, 17, 18, 19, 28, 26, 18, 20, 14, 16, 46, 38, 36, 35, 40, 34, 48, 47, 41, 43, 44, 39, 42, and four without numbers; fifteen freight cars, Nos. 20, 4, 19, 40, 25, 39, 10, 7, 8, 8, 7, 15, 43, 42, 3 and 21; being the same locomotives and tenders, passenger cars, baggage cars, platform cars, gravel cars and freight cars, levied upon by the marshal of the said northern district of Ohio, and exposed by him to sale by virtue of an alias writ of fieri facias issued out of this court on the law side thereof, at the suit of the said Joseph Pennock and Nathan F. Hart, against the said Cleveland, Zanesville and Cincinnati Railroad Company, as hereinafter more particularly mentioned.

Your orator further says, that said company subsequently contracted a large amount of indebtedness to various banking institutions and individuals, for money borrowed and expended upon said road, and for other purposes connected therewith; and afterwards, on the first day of November, 1854, and after all the aforesaid locomotives, tenders, passenger cars, baggage cars, platform cars, gravel cars, and freight cars hereinbefore described, had been procured and placed upon said road for the purpose aforesaid, executed and issued seven hundred bonds of that date, each bond in the sum of one thousand dollars, payable in fifteen years from the date thereof, and also interest thereon at the rate of seven per cent. per annum, payable semi-annually, on the first day of each May and of each November ensuing the date thereof, until said principal sum should be paid, and delivered said bonds to its creditors, in some instances as collateral security for, and in other instances in payment of, said indebtedness, and that to secure the payment of said bonds and interest, and in consideration of one dollar paid to said company by George Mygatt, of Cleveland, in said State of Ohio, the said company, by its deed, duly executed, granted, bargained, sold, transferred, and conveyed to the said George Mygatt and his successors in the trust thereby created, its said road, equipment and

appurtenances, in the same manner, to the same extent, and upon similar trusts to those described and set forth in the aforesaid deed of said company to your orator; that said George Mygatt accepted said trust, and forthwith thereafter caused said deed to be duly recorded in said counties of Summit, Wayne and Holmes.

And your orator further says, that said company made default in the payment of the semi-annual instalment of interest which became due on said issue of five hundred bonds on the first day of October, 1854, and has ever since failed to pay in full the interest which has become due thereon; by means whereof, the legal title to all of said locomotives, tenders, passenger cars, baggage cars, platform cars, gravel cars, and freight cars became vested in your orator, subject nevertheless to be divested by the payment of the said semi-annual instalments of interest now due on said bonds; and thereupon said company, at the special instance and request of your orator, and in pursuance and fulfilment of said covenant in the aforesaid deed to your orator, to make any further reasonable and necessary conveyance of said premises to your orator, for more fully carrying into effect the objects of said first mentioned conveyance, and particularly for the conveyance of any property acquired by said company subsequent to the date of said conveyance, and comprehended in the description contained therein, in or about the month of April, 1855, executed and delivered to your orator a further deed of said road, its equipment and appurtenances, embracing said locomotives, tenders, passenger cars, baggage cars, platform cars, gravel cars, and freight cars, which said deed of conveyance your orator immediately thereafter caused to be recorded in said counties of Summit, Stark and Holmes, as aforesaid.

Your orator further says, that said road, its equipment and appurtenances so as aforesaid conveyed to your orator, are not adequate security to pay the principal and the semi-annual instalments of interest due and to become due on said issue of five hundred bonds, and that said company possess no means or resources for paying the same, except from the transportation of passengers and freight over said road, for which purpose, and the further purpose of keeping said road ballasted and in suitable repair for the covenient and economical working of the same, the constant and uninterrupted use and possession of said locomotives, tenders, passenger cars, baggage cars, platform cars, gravel cars, and freight cars are indispensably necessary.

Your orator further says, that sixteen bonds of said issue of seven hundred bonds, bearing date November 1st, 1854, subsequently came into the hands and possession of the said Joseph Pennock and Nathan F. Hart, with full knowledge of the existence of the aforesaid conveyances, made by said company, to your orator and the said George Mygatt; and thereupon the said Joseph Pennock and Nathan F. Hart instituted a suit on said sixteen bonds

against the said company, on the law side of this honorable court, on the 19th day of July, 1855, and such proceedings were thereupon had in said suit, that, on the sixteenth day of May, 1856, the said Joseph Pennock and Nathan F. Hart recovered a judgment against said company, upon said bonds, in the sum of $17,765 50, and the costs of said suit to be taxed to $28 15.

Your orator further says, that said Joseph Pennock and Nathan F. Hart have caused a writ of execution to be sued out of the law side of this court upon said judgment, and have caused said writ to be levied upon said locomotives, tenders, passenger cars, platform cars, baggage cars, gravel cars, and freight cars, and have caused the same to be exposed for sale at public auction to satisfy said judgment, on Monday, the eighth day of September instant; that said company is wholly insolvent, and wholly unable to replace said locomotives, tenders and cars, in case the same should be sold as aforesaid; that a sale would wholly interrupt the use and possession of said road, deprive the holders of said bonds issued on the first day of April, 1852, of the means of obtaining any interest thereon, materially lessen their security, and do them a great and irreparable injury, which no court of law could redress; and that the conduct of the said Joseph Pennock and Nathan F. Hart in the premises is in fraud of the rights of your orator, and of the holders of said issue of five hundred bonds, and is an attempt unlawfully to appropriate to their own exclusive and individual benefit the proceeds of property previously set apart and pledged in the first instance for the common benefit of all the holders of the issue of five hundred bonds, and subsequently for the common benefit of all the holders of the issue of seven hundred bonds.

Your orator says, that said company was originally incorporated by the name of the Akron Branch of the Cleveland and Pittsburg Railroad Company, and by such name executed said issue of five hundred bonds, and also the deed to your orator to secure the same, but that at the March term of the court of common pleas of Summit county, 1853, the name of said company was changed to that of the Cleveland, Zanesville and Cincinnati Railroad Company.

Your orator says, that he and the holders of said issue of five hundred bonds are without any adequate remedy in the premises against the said unlawful acts of the said Joseph Pennock and Nathan F. Hart, save through the interposition of this honorable court in the exercise of its chancery powers. Your orator therefore prays that the writ of subpœna may issue against the said Joseph Pennock and Nathan F. Hart, and the said Railroad Company, commanding them to appear and answer all and singular the premises; that on the final hearing of this cause the said defendants, Pennock and Hart, may be forever restrained from causing said

locomotives, tenders and cars to be sold to satisfy their said judgment at law, and from all interference with said locomotives, tenders and cars, for any such purpose.

And during the pendency of this suit, and until the final determination of the same, your orator prays this court to allow an injunction restraining said defendants from selling said property as aforesaid; and, as in duty bound, will ever pray.

OTIS, SEARS & WYMAN,
*Sol's for Compl't.*

THE UNITED STATES OF AMERICA,
*Northern District of Ohio, ss.*

Before the subscriber, clerk of the circuit court of the United States for the northern district of Ohio, personally appeared Theo. C. Sears, who being duly sworn, on oath deposes and says, that he is one of the solicitors of the complainant in the foregoing bill; that said complainant is a resident of the city of New York, and is without the State of Ohio, and that all and singular the allegations in the foregoing bill are true.

THEO. C. SEARS.

Sworn to this 8 September, 1856.

F. W. GREEN, *Cl'k.*

Whereupon, on the filing of said bill, the said court made and entered on its minutes an order allowing the injunction prayed for in said bill, which order of allowance is in the words and figures following, to wit:

GEORGE S. COE, Trustee, &c.,
vs.
JOSEPH PENNOCK, NATHAN F. HART, and the Cleveland, Zanesville, and Cincinnati Railroad Co. } No. 331.—In Chancery.

On motion to the court by the solicitors for the complainant, it is ordered that an injunction be allowed as prayed for in the bill, to be continued until the further order of the court; and that the said complainant give bond and security to the said Pennock & Hart in the sum of two thousand dollars, conditioned according to law.

And thereupon, on said ninth day of September, in the year of our Lord one thousand eight hundred and fifty-six, the said complainant filed in said court an injunction bond in the words and figures following, to wit:

Know all men by these presents, that I, Philo Chamberlain, am held and firmly bound unto Joseph Pennock and Nathan F. Hart in the sum of two thousand dollars, to the payment of which I bind myself, my heirs, executors, and administrators.

Sealed with my seal and dated this 9th day of September, A. D. 1856.

The condition of the above obligation is such, that whereas George S. Coe has obtained an allowance of an injunction in the circuit court of the United States of America for the northern district of the State of Ohio to restrain the said Joseph Pennock and Nathan F. Hart from causing certain locomotives, tenders, and cars, mentioned in a certain bill of chancery filed by the said George S. Coe, trustee, &c., in the said court, against the said Joseph Pennock and Nathan F. Hart and the Cleveland, Zanesville, and Cincinnati Railroad Company, to be sold to satisfy a judgment at law obtained in said court by the said Joseph Pennock and Nathan F. Hart against the said Cleveland, Zanesville, and Cincinnati Railroad Company, and from all interference with the said locomotives, tenders, and cars, for the purpose of sale, during the pendency of said suit.

Now if the said George S. Coe, trustee, &c., shall abide the decision of said court, and shall pay the said Pennock & Hart all damages they may sustain if the said injunction be wrongfully obtained, then these presents shall be void, otherwise of full force and virtue.

PHILO CHAMBERLAIN. [SEAL.]

And thereupon, to wit, on said ninth day of September, in the year of our Lord one thousand eight hundred and fifty-six, there was issued from the clerk's office of said court a writ of subpœna in this cause against said defendants, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
*Northern District of Ohio, ss.*

The President of the United States of America to the Marshal of the northern district of Ohio, greeting:

You are hereby commanded to summon Joseph Pennock, Nathan F. Hart, and the Cleveland, Zanesville, and Cincinnati Railroad Company, if they be found in your district, to be and appear in the circuit court of the United States for the northern district of Ohio aforesaid, at Cleveland, on the first Monday of October next, to answer a bill in chancery filed in said court against them by George S. Coe, trustee, &c. Hereof they are not to fail, under the penalty of the law thence ensuing, and have you then and there this writ. [SEAL.]

Witness the Honorable Roger B. Taney, Chief Justice of the United States, this 9th day of September, A. D. 1856, and in the 81st year of the independence of the United States of America.

F. W. GREEN, *Clerk.*

*Memorandum.*

The defendants are required to enter their appearance in this

suit in the clerk's office of said court on or before the first Monday of October, 1856, otherwise the bill may be taken pro confesso.

F. W. GREEN, *Clerk.*

On which writ of subpœna is endorsed an acknowledgment of service by the defendants, Pennock & Hart, as follows, to wit:

We acknowledge service of the within subpœna for the within-named Joseph Pennock and Nathan F. Hart, and enter their appearance in this suit.

SPALDING & PARSONS,
*Solicitors for Def'ts.*

Sept. 11, 1856.

And also on said ninth day of September, in the year of our Lord one thousand eight hundred and fifty-six, there was issued from said clerk's office the writ of injunction herein allowed, which is as follows, to wit:

THE UNITED STATES OF AMERICA,
*Northern District of Ohio, ss.*

The President of the United States of America to Joseph Pennock and Nathan F. Hart, your attorneys and agents, greeting:

You are hereby commanded that, from and after your receipt or notice of this our writ of injunction by you, or any of you, had, you do absolutely and entirely desist and refrain from causing certain locomotives, tenders, and cars mentioned in a certain bill in chancery, filed on the 9th day of September, 1856, in the circuit court of the United States for the northern district of Ohio, by George S. Coe, against you, the said Joseph Pennock, and Nathan F. Hart, and the Cleveland, Zanesville, and Cincinnati Railroad Company, which have been levied upon by the marshal of the United States for said district, to be sold to satisfy a judgment at law obtained in said court by the said Joseph Pennock and Nathan F. Hart against the said the Cleveland, Zanesville, and Cincinnati Railroad Company, on the 16th day of May, 1856, for the sum of $17,765 50 and costs of suit, and from all interference with the said locomotives, tenders, and cars, for the purposes of sale, during the pendency of the said bill in chancery, or until our said circuit court shall make further order to the contrary. Hereof fail not, under the penalty of the thence ensuing.

[SEAL.]

Witness the Honorable Roger B. Taney, Chief Justice of the United States, this 9th day of September, 1856, and in the 81st year of the independence of the United States of America.

F. W. GREEN, *Clerk.*

On said writ of injunction is endorsed an acknowledgment of service thereof as follows, to wit:

Service of this writ of injunction is hereby acknowledged by us as solicitors for the within-named Pennock & Hart.

SPALDING & PARSONS,
*Solicitors for Def'ts.*

Sept. 11, 1856.

And at said September adjourned and special term of said court, in the year of our Lord one thousand eight hundred and fifty-six, this cause was continued.

And afterwards, to wit, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and fifty-six, at the November term of said court, in said year, came the defendants, Joseph Pennock and Nathan F. Hart, by their solicitors, and by leave of the court filed their answer to the said bill of the complainant, which said answer is in the words and figures following, to wit:

U. S. Circuit Court, 7th circuit and northern district of Ohio.

GEORGE S. COE, Trustee, &c.,
vs.
JOSEPH PENNOCK and NATHAN F. HART et al.
} Chancery.

The joint answer of Joseph Pennock and Nathan F. Hart, two of the defendants, to the bill in chancery of George S. Coe, trustee, &c., complainant.

These defendants now, and at all times thereafter, saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say, that it is true, as they are informed and do verily believe, that the corporate body now known as the "Cleveland, Zanesville and Cincinnati Railroad Company," but then called the "Akron Branch of the Cleveland and Pittsburg Railroad Company," did on the first day of April, A. D. 1852, execute and deliver to the complainant a deed of trust of that date of the tenor of the one set forth in his bill; but, for greater certainty in this respect, these defendants ask leave to refer to an attested and duly authenticated copy of said deed as part and parcel of their answer, which is attached to the same, and marked "Exhibit A." The defendants deny that said deed was made in pursuance of the authority conferred upon said company by law, and claim that the same is wholly inoperative to defeat or in any degree to prejudice the rights of defendants hereinafter set forth.

The defendants admit the execution and issue of five hundred bonds of the denomination of one thousand dollars each by the said Akron Branch of the Cleveland and Pittsburg Railroad Company,

as set forth by complainant in his said bill; and they further admit, that said trust deed was made with the avowed purpose of securing the punctual payment of the accruing interest, and ultimately the principal sum named in said bonds; but these defendants will insist that said bonds were made and issued without lawful authority, and that the same are therefore void. The defendants are not fully informed in respect to the corporate powers of said company, and will therefore call for full proof at the hands of complainant of its original charter, and the various amendments thereto. So far as the knowledge and belief of these defendants extend, said company at the time said bonds were issued and said deed was executed had no power to construct a railroad from Hudson, in the county of Summit, to Millersburgh, in the county of Holmes, but only from Hudson aforesaid to Wooster, in the county of Wayne, or to some other point in the Ohio and Pennsylvania railroad between Massillon and Wooster.

And the defendants will insist that at the date of said deed said company, or the Cleveland and Pittsburg Railroad Company, of which this company was then a branch, had acquired the right of way for a railroad no further than from Hudson to Akron, in said county of Summit, and that the chattel property upon which these defendants have levied their execution at law, as stated in said bill, had then no existence in fact.

The defendants say that the interest on said bonds by the terms thereof, payable semi-annually, has not been paid to the holders thereof, or to any person for their benefit, at any time during the last three years, and that, notwithstanding such default, the said company have been permitted to control their said road, and to receive all the income therefrom, and to purchase and hold rolling stock, and other property used in and upon said road, without any the least interference from the complainant, as trustee, or any other person in behalf of said bondholders.

These defendants further answering, say, that they admit the execution by said Cleveland, Zanesville and Cincinnati Railroad Company of one other trust deed, bearing date the first day of November, A. D. 1854, and made to George Mygatt, trustee, in trust to secure the payment of sundry bonds, amounting in the whole to seven hundred thousand dollars, payable in fifteen years from said date, with interest, payable semi-annually, at seven per cent.

The defendants file herewith an authenticated copy of said last mentioned deed, marked "Exhibit B," and ask to have the same taken as part of their answer.

They admit, also, the execution of one other deed by said Cleveland, Zanesville and Cincinnati Railroad Company to the complainant, George S. Coe, as trustee, bearing date the day of March, A. D. 1855, which last mentioned deed, or an authenticated copy of the same, is herewith filed, marked "Exhibit C," and the defendants ask to have the same taken as part of their answer.

The defendants further answering, say, it is true, and they admit, that sixteen bonds of said issue of seven hundred bonds of one thousand dollars each, bearing date November 1st, 1854, came into the hands of these defendants in due course of trade, and for valuable consideration; but these defendants deny that they had any actual notice of said conveyance to complainant.

The defendants say that said bonds were endorsed and transferred to them by one P. F. Geisse, of Wellsville, in the county of Columbiana, in said State of Ohio, who took them from said Cleveland, Zanesville and Cincinnati Railroad Company in lieu of sundry acceptances of the treasurer of said company, made payable in the city of New York at four and five months from date, beginning June 17, 1853, and ending Feb. 15, 1854, and which acceptances had been returned protested for non-payment.

Said acceptances were given to the said P. F. Geisse in lieu of so much money promised by said company to be paid to him on the delivery of thirty-five house or freight cars and forty platform cars, contracted by him, the said P. F. Geisse, to be manufactured for and delivered to said Cleveland, Zanesville and Cincinnati Railroad Company at Akron, in Summit county, at intervals, beginning on the 19th day of May, 1853, and ending on the 15th day of February, 1854, and which said cars were made and delivered to said company between the dates last aforesaid, and are the identical house and platform cars mentioned in complainant's bill as having been seized in execution by the marshal at the suit of these defendants against the said company.

These defendants admit that after several instalments of interest had fallen due upon said bonds thus negotiated to them by said P. F. Geisse, without any payment or offer of payment by said company, they instituted suit in this honorable court, on the law side thereof, on the 19th day of July, 1855, for the recovery of the principal and interest due thereon, in accordance with the stipulations contained on the face of said bonds; that on failure to pay any of the instalments of interest for thirty days after the same should become due, then the principal sum should become absolutely due and payable; and such proceedings were had, that on the 16th day of May, 1856, these defendants recovered judgment in said suit against said company upon said bonds in the sum of $17,765 50, and costs of suit, taxed at $28 15.

These defendants further answering, admit that they have caused a writ of execution to be issued upon said judgment, and to be levied by the marshal upon the locomotives, tenders, passenger cars, platform cars, baggage cars, freight or house cars, and gravel cars, in possession of said judgment debtors, and that the same were advertised for sale at public auction to satisfy said judgment as alleged in said bill of complaint. They further admit the truth of the allegation in said bill that said Cleveland, Zanesville, and

Cincinnati Railroad Company is wholly insolvent and unable to pay its just debts.

And now having fully answered, these defendants ask to be hence dismissed, with their reasonable costs, &c.

SPALDING & PARSONS,
*Solicitors for Joseph Pennock and Nathan F. Hart, two of the Defendants.*

This indenture, made this first day of April, A. D. one thousand eight hundred and fifty-two, between the Akron branch of the Cleveland and Pittsburg Railroad Company, a corporation duly constituted as such by the laws of the State of Ohio, of the first part, and George S. Coe, of the city of New York, of the second part:

Whereas the parties of the first part, pursuant to the terms of the statute of the said State incorporating them, and other statutes of said State affecting them, are engaged in constructing a railroad from Hudson, in the county of Summit, to Millersburgh, in the county of Holmes, in the State of Ohio aforesaid, and for that purpose need and have resolved to procure iron rails and equipments therefor; and also to raise money by a loan for such purpose not exceeding five hundred thousand dollars, and in order to secure payment therefor, or repayments thereof, to execute from time to time hereafter, as the exigencies of the parties of the first part may require, certain bonds, not exceeding five hundred in number, for the sum of one thousand dollars each, to the persons lending such money, or who may furnish or construct such rails or equipments, payable ten years from the date of said bonds; each bond to be dated at the time of its issue, and bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first day of each April and of each October ensuing the date thereof, until the principal shall be paid, to be on an equality so far as regards security for the repayment thereof by these presents, notwithstanding the same may be issued at different times, each of said bonds being authenticated by a certificate signed by said party of the second part, and containing a clause permitting the holders thereof to exchange the same at par for shares of stock in said railroad company at par:

Now, therefore, this indenture witnesseth that the said parties of the first part, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to them at the sealing and delivering hereof in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer and convey, to the party of the second part, his successors in the trust hereby created and assigned, all the following present and future to be acquired

property of the said parties of the first part—that is to say, their road, made or to be made, including the right of way and the land occupied thereby, together with the superstructure and tracks thereon, and all rails and other materials used therein or procured therefor, inclusive of the iron rails and equipments procured, or to be procured or paid for, with the above described bonds, or the money obtained therefor, bridges, viaducts, culverts, fences, depot grounds and buildings thereon, engines, tenders, cars, tools, machinery, materials, contracts, and all other personal property, right thereto or interest therein, together with the tolls, rents, or income to be had or levied therefrom, and all franchises, rights and privileges of the said parties of the first part of, in, to, or concerning the same; but nothing herein contained shall be construed to prevent the parties of the first part from selling, hypothecating, or otherwise disposing of any county bonds or other securities received in payment of stock or otherwise, or of any bonds or other property of the company not necessary to be retained for their roadway, depot grounds, stations, nor required for the construction or convenient use of their road, nor from collecting moneys due the company on stock subscriptions, or otherwise, provided they shall diligently proceed to collect and faithfully apply all such means to the construction and equipment of their said road, and provided, also, that no default shall have been made in the payment of the interest and principal of any of the above described bonds:

To have and to hold the said premises, and every part thereof, with the appurtenances, unto the said party of the second part, his successors in said trust and assigns, upon the following trusts, that is to say: in case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest on any of said bonds, at any time when the same may *be* become due and payable according to the tenor thereof when demanded, then, after sixty days from such default, upon request of the holder of such bond, the said party of the second part, his successors in said trusts or assigns, may enter into and take possession of all or any part of said premises, and as the attorney in fact or agent of the said parties of the first part, by himself or agent, or substitutes duly constituted, have, use and employ the same, making from time to time all needful repairs, alterations, and additions thereto, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of all of said bonds remaining unpaid; or the said party of the second part, his successors in said trust and assigns, at his or their discretion may, or on the written request of the holders of at least one half of the bonds then unpaid and unconverted into stock, shall cause the said premises, or so much thereof as shall be necessary to pay and discharge the principal and interest of all of such bonds as may then be unpaid and un-

converted as aforesaid, to be sold at public auction, in the city of Cleveland, in the State of Ohio, or in the city of New York, giving at least forty days' notice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest, or claim in or to said premises, or any part thereof; and said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and shall restore the residue thereof to the parties of the first part, it being hereby expressly understood that in no case shall any claim or advantage be taken of any valuations, appraisement, or extension laws, by the said parties of the first part, nor any injunction, or stay of proceedings, or any process be applied for or obtained by them to prevent such entry or sale, as aforesaid.

And the said parties of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyances of the premises, or any part thereof, to the said party of the second part, his successors in said trust and assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any property acquired by said parties of the first part, subsequently to the date hereof, and comprehended in the description contained in the premises. And the said parties of the first part hereby further covenant as aforesaid, that the money borrowed for the purposes aforesaid, upon the security of said bonds, shall be faithfully applied to said purposes and the expenses attending such loan, and to no other purpose whatever; and that said parties of the first part will proceed to construct and equip said road with due diligence until the same shall be finished.

And it is hereby mutually agreed, and these presents are upon this express condition, that on payment of the principal and interest of said bonds, or the conversion thereof into stock in manner aforesaid, the estate hereby granted to said party of the second part shall be void, and the right to the premises hereby conveyed shall revert to and revest in the said parties of the first part, without any acknowledgment of satisfaction, re-conveyance, re-entry, or other acts. And it is also further mutually agreed, that the said party of the second part, his successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agents employed

by him or them, where such agent is selected with reasonable discretion; and that said party of the second part, his successors in said trust or assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to take possession of said premises, or any part thereof, or manage the same. And it is further mutually agreed, that in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right, interest, power, and control in the premises, shall be diverted, cease, and determine, and the same shall from thenceforth, for the purposes aforesaid, be vested in, and all and singular the trusts and duties hereinbefore enumerated shall devolve upon, Elias Fassett, esquire, of the city of New York, without any or further assurance or conveyance of or for the same. And in case of the death, mental incapacity, or resignation of the said Elias Fassett, after the trust hereby created shall devolve upon him, the said parties of the first part shall, or in their default to take proceedings therefor for thirty days, the holders of a majority of said bonds may, apply to the supreme court of the State of Ohio, sitting in bank or in any county in the State, to appoint a new trustee, being a resident of the city of New York, to supply his place, and thereupon such new trustee shall become vested, for the purposes aforesaid, with all the rights and interests hereby conveyed to or vested in the said party of the second part, without any further assurance or conveyance for the same; but if the same shall be necessary, both or either of the parties hereto shall execute any necessary releases or conveyances for that purpose.

In testimony whereof, the said parties of the first part have caused their corporate name to be subscribed, and their corporate seal to be affixed hereto by Simon Perkins, esquire, the president of the Akron Branch of the Cleveland and Pittsburg Railroad Company, and the said party of the second part has set his own hand and seal, the day and year first above written.

AKRON RRANCH of C. and P. R. R. Co. [SEAL.]
By SIMON PERKINS, *Pres't.*
GEO. S. COE. [SEAL.]

Signed, sealed, and delivered in presence of—
EDWIN LUDLOW,
ROBERT B. CAMPBELL.

UNITED STATES OF AMERICA,
*State, City and County of New York, ss.*

Know all men by these presents, that on this first day of April, in the year one thousand eight hundred and fifty-two, before me, Robert B. Campbell, a commissioner for the State of Ohio, under the great seal of the said State, duly commissioned and sworn, with power to take the proof and acknowledgments of deeds, and for

other purposes, and residing in the city of New York, personally appeared Simon Perkins, to me known, who being by me duly sworn, said, that he is the president of the Akron Branch of the Cleveland and Pittsburg Railroad Company; that the seal affixed to the foregoing instrument is the common seal of the Akron Branch of the Cleveland and Pittsburg Railroad Company, and was affixed thereto by their authority, and he signed the same as president by the like authority; and on the same day also personally appeared George S. Coe, one of the individuals described in and who executed the said instrument, and acknowledged to me that he executed the same for uses and purposes therein mentioned.

In testimony whereof, I have subscribed these presents, and caused my commissioner's seal to be hereunto affixed, at the city of New York, the day and year above written.

ROBT. B. CAMPBELL, [SEAL.]
*Commissioner for the State of Ohio, in New York.*

Rec'd April 15, 1852, 4 hrs. p. m. Recorded April 24, 1852.
J. JENNINGS, *Recorder.*

THE STATE OF OHIO,
*Summit County, ss.*

I, Henry Purdy, recorder within and for the county of Summit and State of Ohio, do hereby certify that the foregoing is truly taken and copied from the records of Summit county, mortgage book 16, pages 645, 646, 647, 648, and 649.

In testimony whereof, I hereunto subscribe my name officially, and affix my seal of office, at Akron, this twenty-fourth day of October, A. D. 1856. [SEAL.]

HENRY PURDY, *Recorder.*

This indenture made this first day of November, in the year of our Lord one thousand eight hundred and fifty-four, between the Cleveland, Zanesville and Cincinnati Railroad Company, a corporation, duly constituted as such by the laws of the State of Ohio, of the first part, and George Mygatt, of the city of Cleveland and the said State of Ohio, of the second part.

Whereas the party of the first part hath constructed its road from Hudson, in the county of Summit and State of Ohio, to Millersburgh, in the county of Holmes, in the same State; and whereas the said party of the first part need and have resolved to execute and sell, or otherwise dispose of, as the same may be needed, its bonds, for the sum of two hundred fifty dollars, five hundred dollars, and one thousand dollars each, in such proportions as to each of said several sums as said party of the first shall deem best for its interest, but so that the aggregate of all such bonds shall not exceed the sum of seven hundred thousand dollars, for the purpose of raising money to complete the bed and superstructure of its said road; to erect and finish the needful shops, freight and

passenger houses, and other suitable fixtures, and, generally, to provide for and complete the thorough equipment of its said road, as well as to pay the indebtedness of the said company incurred in and for the construction thereof; each bond to bear date the first day of November, A. D. 1854, to be payable fifteen years after date, to bear interest at the rate of seven per cent. per annum, payable semi-annually on the first day of each month of May and November thereafter, until the principal sum shall be paid; to be on an equality, so far as regards the security created by these presents for the payment thereof, and to be authenticated and identified by a certificate signed by the said party of the second part:

Now, therefore, this indenture witnesseth, that the said party of the first part, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to them at the sealing and delivering hereof in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred and conveyed, and by these presents do grant, bargain, sell, transfer and convey to the said party of the second part, his successors in the trust hereby created and assigns, forever, the said railroad of said party of the first part, including all grounds and premises used, or designed to be used, for depots, stations, shops or otherwise, for the purposes of said road, as laid out, surveyed, graded and bridged, or otherwise used, or intended to be used, by the said party of the first part, extending from Hudson aforesaid to Millersburgh aforesaid, with all turn-outs, turn-tables, switches, stations, buildings, structures, shops, machinery, fixed or movable, and materials in or about the same, iron rails, ties, water-tanks, bridges, culverts, viaducts, fences, and whatsoever else is attached, appurtenant or incident to the real estate or railroad of the said party of the first part; also all the locomotives, tenders, passenger cars, baggage cars, house cars, gravel cars, construction cars, platform cars and hand cars, owned by the said party of the first part, wherever the same be found or situated, and all other its rolling stock or equipments, if any there be, not specifically enumerated; also all its wood, lumber, ties not in place, fuel, iron, timber, implements, tools, machinery, and materials of every kind, nature or description, wherever situate; also all the tolls, revenue or income, to be had or levied from its railroad or other property, or which may otherwise accrue to the said party of the first part; also all the franchises, rights and privileges of the said party of the first part, of, in, to or concerning its said road and property, so far as the same can or may lawfully be conveyed or transferred by the said party of the first part; and also all other real or personal property of every kind, nature or description, not hereinbefore mentioned or comprehended, owned by or belonging to the said company, wherever such property or estate is or may be found or situated, and all its

right, title, claim or interest, legal or equitable, in or to any real or personal property or estate, wherever found or situate:

To have and to hold the same and every part thereof, with the appurtenances, to him, the said party of the second part, his successors in the trust, as hereinafter mentioned, and assigns forever, as fully and amply in all things as may be necessary for him to execute the trusts in respect thereof, or any part or parts thereof hereinafter mentioned and declared, until such trusts shall be fully performed and satisfied, as fully and absolutely as the said party of the first part might hold, or may or can convey or transfer the same; and it is hereby understood and declared, that this conveyance and the estate, right, title, interest, and property hereby granted, conveyed and transferred, is and are upon the following trusts—that is to say, in case the said party of the first part shall fail to pay either the principal sum mentioned in the said bonds, or any of them, or the interest, or any part thereof, that may accrue on the said bonds or any of them, within thirty days after such principal sum or interest shall become due and payable, according to the tenor and effect of the said bonds, or of any of them, then at any time after the expiration of the said term of thirty days, and upon the request of the holder of such bonds, or of any or either of them, and whether payment of such interest or principal shall have been demanded or not, the said party of the second part, his successors in said trust or assigns, may, with or without process or law, enter into and take possession of all or any part of the road, premises, franchises and property hereby granted, conveyed or transferred, and as the agent or attorney in fact of the said party of the first part, by himself or agents, or substitutes by him appointed, hold, use, manage and employ the same, making from time to time all needful repairs, alterations and additions, and doing such other acts as may be requisite to the proper and efficient working and operating of the said road, and the enjoyment, use, and preservation of the property granted or transferred hereby; and after deducting all the costs, charges and expenses which may have been incurred in and about the execution of the trusts created hereby, apply the tolls, revenue, income and moneys accruing and arising therefrom, equally and ratably to payment of the interest, or the principal and interest, of all of said bonds then remaining due and unpaid; or in lieu and stead of so holding, using, operating and enjoying the said road, premises, franchises and property, real and personal, the said party of the second part, his successors in said trust and assigns, at his or their discretion may, and on the written request of the holders of at least one-half in amount of the bonds on which default of payment either of principal or interest has been so made as aforesaid, shall, with or without taking possession thereof, as he shall think best, cause all the said premises, road franchises, interest and property, real or personal,

hereby granted and transferred to him, or so much thereof as in his judgment shall be necessary to pay and discharge both the interest and principal of all of such bonds as may then be unpaid, or otherwise unsatisfied, to be sold at public auction, in the city of Cleveland, in the State of Ohio, or in the city of New York, giving at least forty days' notice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof such good and sufficient deed or deeds of conveyance in fee simple, and assignments and transfers, or other sufficient instrument for the same, and which shall operate as a bar against the party of the first part, its successors and assigns, and all persons claiming under them, of all right, title, interest, claim, or property in or to said premises, railroad franchises, and property, real or personal, or any part thereof; and the said party of the second part, his successors in said trust and assigns, shall, after deducting from the proceeds of such sale the costs, charges, and expenses thereof, and of otherwise executing the trusts created hereby, apply so much of such proceeds as may be necessary, equally and ratably to the payment of the whole sum, whether of interest or principal, then either due or unpaid upon said bonds, and shall restore the residue thereof to the party of the first part, it being hereby expressly understood and stipulated, that in case such sale shall be made, as above provided for, whether the same be done on default of payment of either the principal sum of said bonds or of the interest accruing thereon, that the whole sum, whether of interest or principal, then unpaid or unsatisfied, on such bonds, shall, for the purposes of such sale, and the distribution of the proceeds thereof, be deemed and taken to be then due and payable without regard to the time of payment specified in and by said bonds, and that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said party of the first part, nor any injunction, or stay of proceedings, or any process be applied for or obtained by them to prevent such entry or sale as aforesaid.

And the said party of the first part doth, for the consideration aforesaid, hereby covenant and agree, to and with the party of the second part, his successors in said trust and assigns, that at any time or times when in his or their judgment the same shall be necessary for preserving unimpaired the rights, claims, interest, and security of the holders of said bonds, or any of them, the said party of the second part, his successors in said trust and assigns, may, with or without process of law, enter upon, take possession of, employ, use, work, operate, and enjoy the premises, road franchises, rights, and property hereby transferred or conveyed, and take the tolls, revenue, and income thereof, and continue in such

possession, use, and enjoyment thereof, so long as it shall be necessary for the purposes aforesaid, and shall apply the proceeds thereof after deducting the costs, charges, and expenses incurred by him in the premises, to the payment equally and ratably of the interest and principal of said bonds then due and payable, if any there be; and if none shall then be so due, he shall retain said proceeds until such interest or principal shall become due and payable, and then apply the same to the payment thereof.

And the said party of the first part hereby further covenants to execute and deliver any further reasonable and necessary conveyance, assignment, or transfer of the said premises, road franchises, and property, real or personal, or any part thereof, to the said party of the second part, his successors in said trust and assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any property acquired by said party of the first *party* subsequently to the date hereof, and comprehended in the description contained in the premises.

And it is hereby mutually agreed, and these presents are upon this express condition, that on payment of the principal and interest of said bonds or other proper discharge and satisfaction thereof, the estate, right, and interest hereby granted to said party of the second part shall be void, and the right to the premises, road franchises, and property hereby conveyed shall revert to and *revert* in the party of the first part without any acknowledgment of satisfaction, re-conveyance, re-entry or other acts; and it is also further mutually agreed, that the said party of the second part, his successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof; that he may employ agents, servants, and substitutes, such as he shall deem necessary or proper, for whose acts or omissions he shall not be responsible when such agents, servants, or substitutes are selected with reasonable discretion; and the said party of the second part, his successors in said trust or assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to take possession of said premises, road franchises, and property, or any part thereof, or sell or manage the same.

And it is further mutually agreed, that in case of the death, mental incapacity, resignation, or neglect, or refuse to act when required so to do by the terms of the trust hereby created, the said party of the first part shall, or, in their default to take proceedings therefor for thirty days, the holders of a majority of said bonds may, apply to the supreme court of the State of Ohio, if in session, or to any three of the judges thereof in vacation, to appoint a new trustee, being a resident of the city of Cleveland, to supply his place, and thereupon the estate, right, interest, power, and control in the premises of the party of the second part shall be divested,

cease and determine, and such new trustee shall become vested for the purposes aforesaid with all the rights and interest hereby conveyed, assigned, or transferred to or vested in the said party of the second part, without any further assurance or conveyance for the same; but if the same shall be necessary, both or either of the parties hereto shall execute any necessary release, conveyance, assignments, or transfers for that purpose.

In testimony whereof, the said party of the first part hath caused these presents to be signed by Simon Perkins, esquire, its president, and its corporate seal to be by him hereto affixed, and the said party of the second part has hereto set his own hand and seal, the day and year first above written.

SIMON PERKINS, *Pres't.* [SEAL.]
GEORGE MYGATT. [SEAL.]

Signed, sealed, and delivered by Simon Perkins in presence of—
E. P. GREEN,
FRED'K WADSWORTH.

Witnesses to signature of George Mygatt—
W. H. WAYNARD,
E. J. ESTEP.

STATE OF OHIO,
*Summit County, ss.*

Before the undersigned, a notary public within and for said county, on the first day of November, A. D. 1854, personally came the above named Simon Perkins, president of the Cleveland, Zanesville and Cincinnati Railroad Company, who as such president, and on behalf of such company, acknowledged that he did sign the foregoing instrument, and that the corporate seal of the Cleveland, Zanesville and Cincinnati Railroad Company was by him thereto affixed, and that the same is his and its voluntary act and deed, and in conformity with a special order of the board of directors of said company.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, this first day of November, A. D. 1854.
[SEAL.]

E. P. GREEN,
*Notary Public.*

STATE OF OHIO,
*Cuyahoga County, ss.*

Before the undersigned, a notary public within and for said county, on the first day of November, personally came the above named George Mygatt, and acknowledged the signing and sealing of the foregoing instrument to be his voluntary act and deed, and that he has accepted the trusts thereby vested in him.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, this first day of November, A. D. 1854. [SEAL.]

E. J. ESTEP,
*Notary Public.*

Received November 1, 1854.
Recorded November 1, 1854.

HENRY PURDY,
*Recorder.*

THE STATE OF OHIO,
*Summit County, ss.*

I, Henry Purdy, recorder within and for the county of Summit and State of Ohio, do hereby certify that the foregoing is truly taken and copied from the records of Summit county, mortgage-book 26, pages 219, 220, 221, 222, 223, 224, and 225.

In testimony whereof, I do hereunto subscribe my name and affix my seal of office, at Akron, this twenty-fourth day of October, A. D. 1856. [SEAL.]

HENRY PURDY,
*Recorder.*

This indenture, made this day of March, in the year one thousand eight hundred and fifty-five, between the Cleveland, Zanesville and Cincinnati Railroad Company, a lawful corporation of the State of Ohio, of the first part, and George S. Coe, of the city, county, and State of New York, of the second part:

Whereas, by indenture bearing date the first day of April, in the year one thousand eight hundred and fifty-two, which said indenture was received in the record office of Summit county, in said State of Ohio, on the fifteenth day of April, one thousand eight hundred and fifty-two, and duly recorded in record-book of said county, number (16) sixteen, pages 645, &c., and likewise duly recorded in the county of Holmes and Wayne, in said State, the railroad company then known as the Akron Branch of the Cleveland and Pittsburg Railroad Company, a corporation constituted as such by the laws of the State of Ohio, of the first part, did, for the uses and purposes and upon the consideration therein expressed, grant, bargain, sell, transfer, and convey to George S. Coe, of the city of New York, of the second part, his successors in the trust thereby created, and assigned all the then present and future to be acquired property of the said parties of the first part thereto—that is to say, their road, made or to be made, including the right of way and the land occupied thereby, together with the superstructure and tracks thereon, and all rails and other materials used therein or procured therefor, inclusive of the iron rails and equipments procured or to be procured or paid for with the bonds described in said indenture, or the money obtained therefor, bridges, viaducts, culverts, fences,

depôt grounds and buildings thereon, engines, tenders, cars, tools, machinery, materials, contracts, and all other personal property-right thereto or interest therein, together with the tolls, rents, or incomes to be had or levied therefrom, and all franchises, right, and privilege of the said parties of the first part thereto, of, in, to, or concerning the same, upon certain trusts, as by reference to the said indenture may more fully appear: And whereas, by the said indenture, the said parties, by the first part thereto, did thereby covenant, for the consideration therein expressed, to execute and deliver any further reasonable and necessary conveyance of the premises, or any part thereof, to the said party of the second part thereto, his successors in said trust, and assigns, for more fully carrying into effect the object hereof, particularly for the conveyance of any property acquired by said parties of the first part thereto, subsequently to the date thereof, and comprehended in the description contained in the premises:

And whereas, at a term of the court of common pleas for the county of Summit, in the said State of Ohio, begun and held at the court-house, in the town of Akron, in the county and State aforesaid, on the fifteenth day of March, in the year one thousand eight hundred and fifty-three, by and before one of the judges of said court, an order was duly obtained, in the words and figures following, to wit:

*Application for change of name.*

In the matter of the Akron Branch of the Cleveland and Pittsburg Railroad Company.

And now come the said petitioners, and prove to the satisfaction of the court, that the notice of the court, object and prayer of the said petition, has been duly given, by publishing such notice for thirty days prior to this term of the court in the Summit Beacon, a newspaper of general circulation in the said county of Summit, in which county the principal office of said company is located, and which notice is hereby adjudged to be sufficient. And thereupon the said petition came on to be heard; and the court, being satisfied of the existence of the facts set forth in the said petition, adjudged the same to be good cause for the change of name sought for in said petition.

On consideration whereof, the court do order, adjudge, and decree, that the name of the said company, heretofore known as the Akron Branch of the Cleveland and Pittsburg Railroad Company, be changed to that of the Cleveland, Zanesville and Cincinnati Railroad Company, and that, from this time, the said company shall be called, known, and designated by the last mentioned name of the Cleveland, Zanesville and Cincinnati Railroad Company, and that the petitioner pay the costs of this proceeding, to be taxed.

Now, therefore, this indenture witnesseth, that the said "The Cleveland, Zanesville and Cincinnati Railroad Company," parties hereto of the first part, in order the better to secure the payment of the bonds mentioned in said indenture as aforesaid, and interest, and for the better assuring and confirming the title, interest and power of the said George S. Coe, under the said indenture, in relation to such property, interest, and rights acquired by and accruing to said party hereto of the first part, subsequently to the date of said indenture, and for the purpose of more fully carrying out the true intent and meaning of the said indenture, and the covenants therein contained as above set forth, and in consideration of the sum of one dollar then, at the sealing and delivery hereof, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said party of the second part, his successors in the trust created by said indenture and assigns, their road between Hudson, in the county of Summit, and Millersburgh, in the county of Holmes, in the said State of Ohio, including the right of way and the land occupied thereby, together with the superstructure and tracts thereon, and all rails and other materials used therein or procured therefor, bridges, viaducts, culverts, fences, depot grounds, and buildings thereon, engines, tenders, cars, tools, machinery, materials, contracts, and all other personal property, right thereto or interest therein, together with the tolls, rents, or income to be had or levied therefrom, and all franchises, rights, privileges of the said parties of the first part of, in, to or concerning the same, but nothing herein contained shall be construed to prevent the parties of the first part from selling, hypothecating or otherwise disposing of any county bonds, or other securities received in payment of stock, or otherwise, or of any land or other property of the company not necessary to be retained for their roadway, depot grounds, stations, nor required for the constructions or convenient use of their road, nor from collecting moneys due the company, or stock subscriptions, or otherwise, provided they shall diligently proceed to collect and faithfully apply all such means to the construction and equipment of their road, and provided, also, that no default shall have been made in the payment of the interest and principal of any of the bonds mentioned in the above recited indenture:

To have and to hold the premises, and every part thereof, with the appurtenances, and the interest and rights which pass or which are intended to pass by this conveyance unto the said George S. Coe, party hereto of the second part, his successors in said trust and assigns, to his proper use and benefit and behoof forever; in trust, nevertheless, for the persons or corporations, and for the

benefit, and protection, and security of the persons or the corporations who now hold or shall hereafter hold the bonds issued by the said company, parties of the first part hereto, and secured to be paid by the indenture above set forth, for the uses, purposes, and upon the conditions therein recited, and for enforcing the stipulations of said company in this behalf in their true intent and meaning, whether contained in said indenture or said bonds, or in this conveyance.

And the said party of the first part, for the consideration aforesaid, doth hereby further covenant, that all the conditions, powers, covenants, and privileges in said first mentioned indenture contained, and which will on reference thereto more fully and at large appear, are hereby ratified and confirmed on their part unto the said George S. Coe, party hereto of the second part, and to his successors in said trust and assigns.

In witness whereof, the said party of the first part to these presents has set its corporate seal, and the president of said company, duly authorized by resolution, has subscribed his name, on the day and year aforesaid.

SIMON PERKINS, *Prest.* [SEAL.]
GEO. S. COE. [SEAL.]

Signed, sealed, and delivered in presence of, as to Simon Perkins—

FRED'K WADWORTH,
EDWARD MISE.

As to Geo. S. Coe—

FRED'K H. LAW,
SYLVESTER LAY.

STATE OF NEW YORK,
*City and County of New York, ss.*

Be it remembered, that on the nineteenth day of March, in the year one thousand eight hundred and fifty-five, before me, Sylvester Lay, a commissioner residing in the city of New York, duly appointed by the governor of the State of Ohio to take the acknowledgments of deeds and other instruments to be used or recorded therein, personally appeared George S. Coe, known to me to be the individual described in and who signed and sealed the foregoing instrument, who acknowledged that he did sign and seal the foregoing instrument, and that the same is his free act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal, the said nineteenth day of March, A. D. one thousand eight hundred and fifty-five.

SYLVESTER LAY, [SEAL.]
*Commissioner for the State of Ohio,* 18 *Wall st., N. Y.*

THE STATE OF OHIO,
*Summit County, ss.*

Before me, the undersigned, a notary public within and for said county, on the nineteenth day of April, A. D. 1855, personally came the above named Simon Perkins, president of the Cleveland, Zanesville and Cincinnati Railroad Company, who, as such president and on behalf of said company, acknowledged that he did sign the foregoing instrument, and that the corporate seal of the Cleveland, Zanesville and Cincinnati Railroad Company was by him thereto affixed, and that the same is his and its voluntary act and deed, and in conformity with a special order of the board of directors of said company.

In testimony whereof, I have hereunto set my hand and affixed my official seal, the said nineteenth day of April, one thousand eight hundred and fifty-five.

WM. H. UPSON, [SEAL.]
*Notary Public.*

Rec'd April 19th, 1855, at 3 o'clock p. m., and recorded April 21st, 1855.

HENRY PURDY,
*Recorder.*

THE STATE OF OHIO,
*Summit County, ss.*

I, Henry Purdy, recorder within and for the county of Summit and State of Ohio, do hereby certify that the foregoing is truly taken and copied from the records of Summit county, mortgage book 26, pages 516, 517, 518, 519, and 520.

In testimony whereof, I do hereunto subscribe my name official, and affix my seal of office at Akron, this [SEAL.] twenty-fourth day of October, A. D. 1856.

HENRY PURDY,
*Recorder.*

And afterwards, to wit, at said November term, 1856, of said court, to wit, on the twenty-ninth day of December, 1856, the said complainant, by his solicitors, filed in said court his replication to the said answer of the said Pennock and Hart, which is in the words and figures following, to wit:

United States Circuit Court, 7th circuit and northern district of Ohio.

GEORGE S. COE, Trustee, &c., vs. JOSEPH PENNOCK, NATHAN F. HART, et al. } In Chancery.

The replication of George S. Coe, trustee, &c., complainant, to the answer of Joseph Pennock and Nathan F. Hart, defendants.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and prays as in and by his said bill he hath already prayed.

By OTIS, SEARS & WYMAN,
*Sol'rs for Comp't.*

And at said November term, 1856, of said court, this cause was continued.

And afterwards, to wit, at the February adjourned and special term of said court, in the year 1857, the court made the following order in this case, to wit:

GEORGE S. COE, Trustee, &c.,
vs.
JOSEPH S. PENNOCK et al.
} No. 331.—In Chancery.

On motion to the court by Mr. Sears, of counsel, it is ordered that the Cleveland, Zanesville and Cincinnati Railroad Company, one of the defendants in this case, have leave to file its answer to the said complainant's bill of complaint within thirty days from the rising of this court at the present term.

And afterwards, in the term of February of said court last mentioned, to wit, on the thirteenth day of April, A. D. 1857, came the said defendant, the Cleveland, Zanesville and Cincinnati Railroad Company, by its solicitors, and filed its answer to the said bill of the complainant in the words and figures following, to wit:

The answer of the Cleveland, Zanesville and Cincinnati Railroad Company, one of the defendants, to the bill of complaint of George S. Coe, trustee, &c., complainant.

This defendant for answer to said bill, or to so much and such parts thereof as this defendant is advised is material or necessary to be answered unto, answering, says that it is true, and therefore it admits that it is a corporation erected by and duly organized under an act passed by the general assembly of the State of Ohio, Feb'y 19, 1851, entitled "An act to amend an act to incorporate the Cleveland and Pittsburg Railroad Company, passed March 14, 1836," O. L. L., vol. 49, p. 468, and that it has its principal office or place of business at Akron, in the county of Summit, and within the northern district of the State of Ohio.

In further answering, this defendant says it is true, and therefore admits, that on the first day of April, 1852, in pursuance of authority conferred upon this defendant by law, and for the purpose of raising money to build its line of road then in the course of construction between Hudson, in the county of Summit, and Millersburgh, in the county of Holmes, and to pay debts incurred in the construction thereof, it executed and issued three hundred bonds of the denomination of one thousand dollars each, dated April 1, 1852, payable to J. W. McMillan or bearer, at the office of the Ohio Life Insurance and Trust Company, in the city of New York, ten years from their said date, with the interest thereon, at the rate of seven per cent. per annum, payable semi-annually at the same place, on the first day of each April and each October ensuing the date of said bonds, until the principal sum of said bonds should be paid. That this defendant, to secure the payment or repayment of said three hundred bonds, and the payment or repayment of other bonds which this defendant might thereafter execute and issue of the same denomination, bearing the same rate of interest, and payable to the same person or bearer in the same manner and at the same place, ten years from the date of such issue, not exceeding five hundred bonds in all, and in consideration of the sum of one dollar paid by the complainant, this defendant, by its deed duly executed and dated on said first day of April, 1852, a copy of which is attached to the joint answer of Joseph Pennock and Nathan F. Hart, two of the defendants in this cause, and which this defendant prays may be taken as a part of its answer, conveyed to the said complainant and to his successors in the trust thereby created, and assigns, its then present and future to be acquired property, therein described, upon the terms, trusts, and conditions specified therein; that said complainant accepted the trust created by said deed, and caused the said deed forthwith to be recorded in the counties of Summit, Wayne, and Holmes, and otherwise discharged all the duties incumbent upon him as such trustee, and that this defendant afterwards sold and disposed of said bonds to various individuals, and received the money thereon, which this defendant applied to the purposes aforesaid.

And this defendant further says, that it executed said bonds and mortgage under the name and style of the Akron Branch of the Cleveland and Pittsburg Railroad Company, which was its then corporate name.

In further answering this defendant says, that the entire line of road proposed to be constructed by it extended from Hudson aforesaid to Zanesville, in the county of Muskingum, at which latter place the road of this defendant would connect with the Ohio Central railroad running in the direction of Columbus, and would also connect with the Zanesville, Wilmington and Cincinnati railroad,

and with said last mentioned road form a line of travel from Cleveland through Zanesville to Cincinnati; and for the purpose of acquiring a name expressive of such line of travel, as well as for other reasons, this defendant applied to the court of common pleas of said county of Summit for a change of its name from that of the Akron Branch of the Cleveland and Pittsburg Railroad Company, by which it was incorporated and known, to that of the Cleveland, Zanesville and Cincinnati Railroad Company; and such proceedings were thereupon had, that at the March term of said court, 1853, it was ordered, adjudged and decreed, that the name of this defendant should be changed from that of the Akron Branch of the Cleveland and Pittsburg Railroad Company, to that of the Cleveland, Zanesville and Cincinnati Railroad Company; a copy of which said order and decree was filed in the office of the secretary of state, on the 17th day of March, 1853, and was also published in a newspaper in general circulation in said county of Summit, and by which said last mentioned name this defendant has ever since been known.

In further answering this defendant says it is true, and therefore it admits, that for the purpose of raising further sums of money to build its said line of road between Hudson and Millersburgh aforesaid, and to pay further debts incurred in the construction thereof, this defendant, on the first day of April, 1853, executed and issued the further number of two hundred bonds of the denomination of one thousand dollars each, in all respects like the said bonds of the previous issue, except that they bore date April 1st, 1853, and were payable ten years from their said date, and which were secured by the aforesaid mortgage executed by this defendant to the complainant, which expressly provided that each of said five hundred bonds should bear date at the time of its issue, and although said bonds might be issued at different times, each should be on an equality so far as it regards the security furnished by said mortgage for the payment or repayment of the same, and that this defendant afterwards sold and disposed of said last mentioned bonds to various individuals, and received the money thereon, which this defendant applied to the purposes aforesaid.

And this defendant further says, that it executed said last mentioned bonds under the name and style of the Cleveland, Zanesville and Cincinnati Railroad Company, which was its then corporate name.

In further answering this defendant says, that soon after it commenced the construction of its said line of road, and before the same was opened from Hudson aforesaid to Cuyahoga Falls, in said county of Summit, in or about the month of August, 1851, it also commenced purchasing locomotives, tenders, passenger cars, baggage cars, platform cars, gravel cars, and freight cars, for the use of said road, and in order to operate the same, and continued to purchase the same from time to time as they were needed in the progress of the construction and opening of said line of road from Hudson to

Millersburgh aforesaid, including amongst others the identical locomotives, tenders, passenger cars, baggage cars, platform cars, gravel cars, and freight cars mentioned and described in said bill of complaint, and all of which said locomotives, tenders, passenger cars, baggage cars, platform cars, gravel cars, and freight cars, mentioned and described in said bill of complaint, were purchased by this defendant, and placed upon said road for the use thereof, and in order to operate the same, prior to the first day of April, 1855. That amongst the cars so purchased and placed upon the said road as aforesaid were forty platform cars, and thirty-five house cars, with several sets of brakes, which this defendant purchased from time to time between the 19th day of May, 1853, and the 15th day of February, 1854, upon various periods of credit, from one P. F. Geisse, at and for the price of $47,234 59, including the interest allowed on such credits, and upon which said purchases this defendant paid the said P. F. Geisse from time to time, in cash, the sum of $31,234 59, leaving a balance of $16,000 or thereabouts due the said P. F. Geisse upon said account, and which remained due to said P. F. Geisse until the 20th day of November, 1854.

And this defendant further says, that it was organized on the 17th day of March, 1851, and that its said road was constructed and opened to Cuyahoga Falls on the 1st day of January, 1852, to Akron on the fifth day of July, 1852, to Clinton on the twentieth day of February, 1854, and to Millersburgh on the twentieth day of May, 1854. And this defendant further says, that locomotives and cars were run upon and over said road from Hudson to said points, respectively, as soon as the same was constructed and opened as aforesaid. And this defendant further says, that it has acquired and placed upon its said road for the use of the same no locomotives, tenders, or cars of any kind whatever since the month of February, 1854, except ten freight cars which were constructed by this defendant from materials on hand prior to the month of April, 1855, and were placed upon its said road for the use thereof in or about the month of June, 1855.

And in further answering, this defendant says that it is true, and therefore it admits, that in constructing and equipping the aforesaid line of its road it had not only expended the money subscribed to its capital stock and the proceeds of said five hundred bonds, but had subsequently incurred a large amount of indebtedness, as charged in said bill; and that afterwards, and not long after said locomotives, tenders, passenger cars, baggage cars, platform cars, gravel cars, and freight cars, described in said bill, as levied upon by said marshal, had been purchased and placed upon said road for the use of the same, to wit, on the first day of November, 1854, this defendant executed and issued several hundred bonds of the denomination of two hundred and fifty dollars, five hundred dollars, and one thousand dollars, of that date, which amounted

in the aggregate to the sum of seven hundred thousand dollars, payable to J. W. McMillan, or the holder thereof, at the office of the Ohio Life Insurance and Trust Company in the city of New York, fifteen years from their said date, with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, at the same place, on the first day of each May and each November thereafter, until the principal sum of said bonds should be paid; that this defendant, to secure the payment or repayment of said several bonds, and in consideration of the sum of one dollar paid by George Mygatt, by its deed duly executed and dated on said first day of November, A. D. 1854, a copy of which is attached to the joint answer of the said Pennock and Hart, two of the defendants in this cause, and which this defendant prays may be taken as a part of its answer, conveyed to the said George Mygatt and to his successors in the trust thereby created, and assigns, its then present and future to be acquired property therein described, upon the terms, trusts, and conditions specified therein; that said George Mygatt accepted the trust created by said deed, and caused the deed forthwith to be recorded in the counties of Summit, Wayne, and Holmes, and otherwise discharged all the duties incumbent upon him as such trustee, and that this defendant afterwards delivered said bonds to its creditors, in some instances as collateral security for, and in other instances in payment of said indebtedness; and that on the 20th day of November, 1854, this defendant sold and delivered sixteen of said last mentioned bonds of the denomination of one thousand dollars each, to the said P. F. Geisse, in full satisfaction and discharge of its aforesaid indebtedness to him.

And this defendant avers, that the said P. F. Geisse before and at the time he received said bonds well knew of the aforesaid issue of five hundred bonds and of the execution of the aforesaid deed to the complainant, and that he subsequently transferred said bonds, as this defendant has been informed and verily believes, to the said Joseph Pennock and Nathan F. Hart, as collateral security for a debt contracted by him to them antecedent to the execution of said last mentioned bonds and mortgage.

And in further answering, this defendant says, that it is not true, and therefore it denies, that it failed to pay the semi-annual instalment of interest which became due on said issue of five hundred bonds on the first day of November, 1854, but it admits that it failed to pay the semi-annual instalment of interest which became due on said bonds on the first day of April, 1855; and this defendant also admits, that afterwards, on the 19th day of April, 1855, at the special instance and request of the said complainant, and in pursuance of the covenant contained in the aforesaid deed to him, to execute and deliver any further reasonable and necessary conveyance, assignment, or transfer of the said premises, road,

franchises, and property, real or personal, or any part thereof, to the said complainant, his successors in said trust, and assigns, for more fully carrying into effect the objects thereof, particularly for the conveyance of any property acquired by this defendant subsequent to the date of said first mentioned deed, and comprehended in the description contained in said premises, this defendant executed and delivered to the said George S. Coe, the complainant, and for the consideration therein named, a deed of all its then present and future to be acquired property, a copy of which is also attached to the joint answer of the said Pennock and Hart, and which this defendant prays may be taken as a part of its answer, and thereby conveyed the same to him upon the terms, trusts, and conditions specified therein, and that the complainant forthwith thereafter caused said deed to be recorded in said counties of Summit, Wayne, and Holmes.

And this defendant further answering, says, that since the first day of April, 1855, it has paid a portion of the semi-annual instalment of interest on said five hundred bonds which became due at that date, amounting to the sum of thirty-one dollars and twenty-five cents on each coupon of thirty-five dollars and no more, and it admits that it has failed to pay all the semi-annual instalments of interest which have since become due on all of said five hundred bonds.

And this defendant, in further answering, says that it is true that the said Pennock and Hart recovered a judgment against this defendant upon said bonds of the date of November 1st, 1854, for the amount and at the time charged in said bill; that they caused execution to be issued thereon, and the same to be levied upon the identical locomotives, tenders, and cars described in said bill at Akron, and within the county of Summit, and advertised the same to sale as therein charged.

And in further answering, this defendant says, that all the several matters and things in said bill charged and set forth not hereinbefore denied, explained or admitted, this defendant does hereby admit to be true; and now having fully answered, this defendant prays to be hence dismissed, with its costs in this behalf most wrongfully expended.

The CLEVELAND, ZANESVILLE and CINCINNATI RAILROAD COMP'Y,
[SEAL.] By SIMON PERKINS, *Pres't.*

U. S. Circuit Court, northern district of Ohio, ss.

I, Simon Perkins, being duly sworn, depose and say, that I am the president of the Cleveland, Zanesville and Cincinnati Railroad Company, and that the several matters and things set forth in the foregoing answer of said company subscribed by me, as the president thereof, are true of my own knowledge.

SIMON PERKINS.

Sworn to and subscribed before me this 13th day of April, A. D. 1857.

F. W. GREEN,
*Cl'k U. S. Circuit Court northern district of Ohio.*

And thereupon at said February term, 1857, this cause was continued.

And afterwards, to wit, at the May special and adjourned term of said court, in the year 1857, this cause was continued.

And afterwards, to wit, on the tenth day of July, A. D. 1857, came the said defendants, Pennock and Hart, by their solicitors, and filed in the clerk's office of said court their motion to dissolve the injunction herein in the words and figures following, to wit:

U. S. Circuit Court, 7th circuit and northern district of Ohio.

GEORGE S. COE, Trustee, &c.,
vs.
JOSEPH PENNOCK and NATHAN F. HART, and the Cleveland, Zanesville and Cincinnati Railroad Co. } In Chancery.—Injunction.

And now come the said Joseph Pennock and Nathan F. Hart, two of the defendants to the bill of complaint of Geo. S. Coe, trustee, complainant, by Spalding and Parsons, their solicitors, and move the court to dissolve the injunction heretofore allowed in this case upon the application of said complainant, and for cause show to the court—

1st. That said mortgages or trust deeds said to have been executed by the body corporate known at one time as "The Akron Branch of the Cleveland and Pittsburg Railroad Company," and at this time by the name of "The Cleveland, Zanesville and Cincinnati Railroad Company," and delivered to complainant on the 1st day of April, 1852, and on the 19th day of April, 1855, are and were inoperative and void for want of power in said corporate body to make and execute the same.

2d. That said mortgages or trust deeds are and were inoperative and void so far as they seek to pledge chattel property not in existence at the time the pledge was made.

3d. That said mortgages or trust deeds are and were inoperative and void for want of sufficient certainty in the nature and extent of the grant.

4th. That said mortgages or trust deeds were made in trust to the use of the corporate body making the same; that they were made and have been used to hinder and delay creditors, and to defraud them of their just debts.

5th. That the complainant has not made such a case as will entitle him to the extraordinary aid designed to be afforded in courts of chancery by the writ of injunction.

SPALDING & PARSONS,
*Solicitors for Def'ts.*

And afterwards, at the July term of said court, to wit, on the fourteenth day of July, in the year one thousand eight hundred and fifty-six, the deposition of Simon Perkins, taken by consent of the parties, was filed in this cause in said court, and is as follows, to wit:

Deposition of Simon Perkins, esq., of Akron, in the county of Summit, in the State of Ohio, taken by consent of parties at the office of Spalding and Parsons, in the city of Cleveland, in the county of Cuyahoga, and State aforesaid, on Saturday, the eleventh day of July, A. D. 1857, at the hour of ten o'clock a. m., to be used as evidence in the case now pending in the circuit court of the United States, 7th circuit, and northern district of Ohio, wherein George S. Coe, trustee, is complainant, and Joseph Pennock and Nathan F. Hart and the Cleveland, Zanesville and Cincinnati Railroad Co. are defendants. In chancery. Present, Wm. S. C. Otis, esq., solicitor for complainant; and R. P. Spalding, esq., solicitor for said Pennock and Hart, two of the defendants.

The said Simon Perkins, being first duly sworn, deposes and says, in answer to questions propounded by Mr. Spalding:

1st. How long, and in what capacity, have you been connected with the railroad company under which the complainant, Geo. S. Coe, holds two several mortgages or trust deeds as set forth in his bill of complaint in this suit? What office do you now hold in said company?

Answer. From its first organization I have been, and am now, the president of said company; I am also at the present time the acting superintendent of the road.

2d. In what law or laws of the State of Ohio do you claim to find a grant of your franchises as a corporation?

Answer. Under an act entitled An act to amend an act to incorporate the Cleveland and Pittsburg R. R. Co., passed March 14th, 1836; which amendment, I think, was passed February 19th, 1851, and is to be found in Local Laws, vol. 49, page 468; I also refer to any general laws of the State that may fairly confer powers upon said company.

3d. Please state whether your company did ever organize under the jurisdiction of the Cleveland and Pittsburg R. R. Co., or whether it has been at all times possessed of an exclusive organization independent of that company.

Answer. It organized in the first place as an independent company, and has always remained such.

4th. By what name or names has your corporate body, as a distinctive organization, been known?

Answer. It was first organized on the 17th day of March, 1851, under the chartered name of "The Akron Branch of the Cleveland and Pittsburg R. R. Company," by which name it was known until the month of March, 1853. At the March term of the court

of common pleas of Summit county, 1853, it was ordered, adjudged and decreed by said court that the name of the company should be changed to that of the "Cleveland, Zanesville and Cincinnati Railroad Company," by which name it has ever since been known.

5th. In what law of the State of Ohio can I find the amount of the capital stock allowed to your company other than the last clause of the first section of the amended act referred to by you above, which authorizes the Cleveland and Pittsburg R. R. Company to increase their capital stock "one million of dollars," for the purpose of constructing a branch railroad, as therein set forth and prescribed?

Answer. In answer to this question, I refer to said amendment of February 19th, 1851, and the acts to which it is an amendment, and any general law of the State touching said subject of the capital stock of railroad companies.

6th. What is the present capital stock of your company nominally?

Answer. My impression is that it is five millions of dollars, but cannot be positive. I have nothing to refer to with me to refresh my recollection.

7th. What was the capital stock in amount nominally at the first organization of your company?

Answer. I think not less than a million dollars at the first organization. It has since been increased under the general law of the State, or under the charter. I do not know which.

8th. Will you tell me, with some regard to precision, what is the amount of capital stock actually paid in at the present time?

Answer. At the date of my last report, in January, 1857, it was three hundred and sixty-nine thousand six hundred and twenty-three dollars and fifty-six cents. It may have been slightly increased since by settlements, but of this I am not positive.

9th. I desire to make your last annual report an exhibit in this cause. Will you, for that purpose, say whether the printed report now in the hands of the notary, and marked on the first page thereof with the initials of his name, "S. S.," Exhibit "A," is the genuine report or not made by yourself, in your official character?

Answer. It is.

10th. In March, 1853, at the time you say the name of your company was changed, how far was your railroad completed from Hudson southward so as to admit of travel thereon in cars propelled by steam power?

Answer. From Hudson to Akron, a distance of about fourteen miles.

11th. Where did you commence the construction of your road, and at about what time?

Answer. We first broke ground in Hudson, in Summit county, in the vicinity of its junction with the Cleveland and Pittsburg

R. road in July, 1851, I think. I was absent at the time. Hudson is the northern terminus of the road.

12th. What is the distance upon your railroad from Hudson, at the point where you connect with the main trunk of the Cleveland and Pittsburg R. R., to the point of intersection with the Ohio and Pennsylvania R. R. between Massillon and Wooster?

Answer. The distance from Hudson to Orville, which is the point of intersection with said R. R. formerly called the Ohio and Pennsylvania R. R., but now called the Pittsburg, Fort Wayne, and Chicago R. R., is thirty-eight miles.

13th. Is this the same road that was called the Ohio and Pennsylvania R. R. at the time your amended law was passed, February 19th, 1851?

Answer. It is.

14th. In what county is the village of Orville, and how far is it from the county line of Holmes county?

Answer. Orville is in the county of Wayne, and it is situated about fifteen miles north of the county line of Holmes county, as the road runs.

15th. What is the distance from Orville to Millersburgh, in Holmes county, and please state if Millersburgh is at this time the southern terminus of your railroad as constructed and travelled?

Answer. The distance from Orville to Millersburgh is about twenty-three miles, and Millersburgh is at present the southern terminus of the road.

16th. By means of the Ohio and Pennsylvania R. R., now called the Pittsburg, Fort Wayne, and Chicago R. R., have you a connection with the railroad running from Cleveland to Columbus, and if so, at what point in said Columbus road, and how far from Orville your point of intersection with the Ohio and Pennsylvania R. R.?

Answer. The Pittsburg, Fort Wayne, and Chicago R. R. intersects with the Cleveland, Columbus, and Cincinnati R. R. at Crestline, Crawford county, (I think.) The distance from Orville to Crestline is, according to my impression, sixty-five miles, or thereabouts. Crestline is about sixty or sixty-one miles from Columbus, I think.

17th. State, according to your information and belief, whether the Cleveland and Pittsburg Railroad Company has constructed a branch of their road from some point in the vicinity of Wellsville, down the Ohio river and upon the northerly bank thereof, to connect with the "Ohio Central railroad" at a point opposite Wheeling, in Virginia? And if so, has this been done since February 19th, 1851?

Answer. I believe that to be the case.

18th. Does the Cleveland and Pittsburg railroad touch upon the counties of Wayne or Holmes in any part of its course?

Answer. It does not.

19th. Upon the supposition stated in your answer that the claim against your company now in judgment in favor of Pennock & Hart, was originally a debt due from your company to P. F. Geisse, of Wellsville, Ohio, I wish to know whether that indebtedness did not arise from the construction and delivery by Mr. Geisse to your company of house cars, and platform cars, between the 19th day of May, 1853, and the 15th day of February, 1854, exclusively? And state whether said cars thus made by said Geisse do not form a portion of the property levied on by the U. S. marshal in this case.

Answer. The indebtedness did arise exclusively from the purchase of cars of P. F. Geisse between those dates. I have no doubt that some of the cars made by Mr. Geisse and sold to the company were included in the levy made by the marshal.

20th. Please to state as near as you can at what time the several locomotives and cars levied upon by the marshal in this case were purchased by you and taken into the possession of the company?

Answer. The locomotive "Akron" was purchased and delivered in the fall of 1851; the receipt is dated November 17th, 1851. The locomotive "Hercules" was bought about 26th of October, 1853. The locomotive "Vulcan" was bought about the 13th of April, 1854. Passenger car No. 1 was bought in December, 1851. Passenger cars Nos. 3, 4, 5, and 6, were purchased between the 7th of February and the 1st of March, 1854. All were purchased of Charles Wason, of Cleveland. One of the baggage cars was purchased in December, 1851, and the other was purchased, I presume, at the date of the delivery of the passenger cars in 1854. The residue of the cars levied upon were purchased of Mr. Wason, between October, 1851, and October, 1852, with the exception of those bought of Mr. Geisse between May, 1853, and February, 1854, as far as I can now determine.

21st. What is the cost of a locomotive and tender—say upon an average?

Answer. These cost upon an average about eight thousand dollars each—say from eight to nine.

22d. Have any of the cars that were levied upon by the marshal at the suit of Pennock and Hart been sold by your company since the injunction was obtained in this case; if so, how many cars, of what description, for what price, by whom or what officer of the company were they sold, to whom were they sold, and at what time?

Answer. There was a sale of that kind made by permission of Judge Spalding; twenty eight-wheel gravel cars were sold to the La Crosse and Milwaukie R. R. Company for ten thousand dollars, payable in three and six months; I made the sale as president of the company some time in December, 1856; I negotiated the sale

with Selah Chamberlin, who acted in behalf of the La Crosse and Milwaukie R. R. Company, and took his individual notes therefor.

23d. Was it not upon request made to me by yourself, or some other person, that I agreed to direct the marshal to release those cars from the levy?

Answer. Yes, it was so.

24th. Did the avails of these cars thus sold go to pay debts of the company due to the government for duties upon the iron laid down upon the road?

Answer. It was all applied in that way.

25th. How long had that iron been bonded at the custom-house?

Answer. About three years.

26th. Please to state whether you asked permission of George S. Coe, the complainant in this suit, to make sale of said cars in the manner you have stated, or whether you acted upon your own official discretion.

Answer. Although I had no direction, permission, to sell said cars in the manner stated, yet, as the cars were at that time of no particular benefit to the company, and as the debt to the government was of an imperative character, I took the responsibility to make the sale and to apply the money in extinguishment of the debt. Some six months previous to the sale I was in New York, and had an interview with Mr. Coe and a majority of the first mortgage bondholders and their representatives. At this interview the subject was talked over in regard to this debt to the government for duties, and it was well understood that said debt must be paid out of the earnings or other resources of the company in preference to all other debts, otherwise the iron rails would be subject to be removed by the proper authorities.

27th. Was not Philo Chamberlin, of Cleveland, bondsman in behalf of said road for said duties, and did not the notes of Selah Chamberlin go into his hands at once upon their execution, to be applied in satisfaction of said duties?

Answer. Such was the case.

28th. I now wish to know whether you, as an officer of the company, retained Mr. Otis to institute this suit, or whether Mr. Coe, as a matter of fact, employed him himself without your intervention?

Answer. Mr. Coe was a stranger in this country. I wrote to Mr. Coe after the levy was made, and stated that Mr. Otis was a proper person to look after the matter, and he then sent out a man to make an examination, and afterwards Mr. Coe employed Mr. Otis, as I understand.

29th. How long has it been since default was first made in the payment of interest upon those first mortgage bonds?

Answer. The semi-annual instalment of interest due 1st of November, 1854, was paid at maturity; a part of the semi-annual instalment of interest due 1st April, 1855, was paid in February, 1856; the amt. then paid was $31 25 on each coupon of $35; no other or further interest has been paid since the 1st of November, 1854.

30th. Up to this time has your railroad, with all its rolling stock and revenues of every description, been subject to the direction and control of your board of directors?

Answer. It has by the board of directors and the officers and agents by them chosen.

31st. What real estate is that which is included in the statement of assets and liabilities, under date December 1st, 1856, and amounting to twelve thousand and four hundred dollars, as the same is found in your printed report, made an exhibit in this case; where is it situated, and of what does it consist?

Answer. Two farms in Wayne county, in the township of Baughman; the two farms were purchased in my name to secure the right of way; I mortgaged them to the vendor to secure a large share of the purchase-money; one of those mortgages has since been foreclosed and the farm sold; the other farm still remains subject to mortgage.

32d. Did you consider the interest of the company to be worth the sum at which they are estimated in your report, $12,400?

Answer. I intended the $12,400 to represent the full value of the farms; as the books were kept by double entry, the mortgage debt would be and is included among the liabilities of the company.

33d. The farm that was sold under the mortgage I understand was bought by Smith Orr, esq.; if so, did not Mr. Orr, as a creditor of your company, receive payment of his debt, either wholly or in part, through the purchase of this farm, after paying off the mortgage incumbrance?

Answer. I was away from home at the time of the sale, but when the matter was brought to my knowledge that the farm was to be sold, we tried to raise money to prevent the sale, but were unsuccessful. Judge Orr at the sale bid more than any other person, and took the farm. He has an unsettled account with our company, and on settlement I doubt not he will make us some allowance on account of said purchase. He is under no legal obligation to pay anything more than the excess of his bid over the mortgage debt, which was something; cannot say how much. I expect he will allow us something more, as he is particularly friendly to our road.

SIMON PERKINS.

Continued for cross-examination until Monday morning, July 13th, 10 o'clock.

Before entering upon the cross-examination of Mr. Perkins, it is agreed by and between the counsel of the parties respectively, Mr. Otis for compl't, and Mr. Spalding for Pennock and Hart, two of the defendants, that the answer of the Cleveland, Zanesville and Cincinnati Railroad Company, filed in this cause, may be treated as the deposition of Simon Perkins, esq., the president of said company, taken by complainant; subject, however, to all such legal exceptions on the part of said Pennock and Hart as might have been taken by them, had the same been in fact taken as such deposition, and such exceptions may be taken, if need be, at the hearing of the cause.

*Cross-examination.—Questions by Mr. Otis.*

No. 1. Your annual report of January, 1857, represents the amount of second mortgage bonds outstanding as $75,250. What does that amount represent, and where are the residue of said bonds?

Answer. The $75,250 represent the amount actually paid out in settlement of accounts; the balance are mainly in the hands of C. P. Wolcot, for the benefit of the creditors of the company. What are not with Mr. Wolcot remain with me.

2d. Upon what evidences of indebtedness is the judgment of the defendants Pennock and Hart predicated?

Answer. Upon sixteen of the second mortgage bonds, secured by a mortgage executed by the company to George Mygatt.

3d. To whom, at what time, and for what purpose, were those bonds delivered?

Answer. They were delivered to P. F. Geisse, on the 20th of November, 1854, in payment of the balance of his car account against the company, which was due him in cash.

4th. Of whom were the gravel cars purchased which were sold by you to the La Crosse and Milwaukie R. R. Co., as hereinbefore stated?

Answer. They were purchased of Douglas & Smith, of Zanesville. My impression is they were purchased in the winter of 1853–'54.

5th. Does the road formerly known as the Ohio and Pa. R. R. run in the direction of Columbus?

Answer. It does not, but runs in the direction of Chicogo; and, by consolidation with the Ohio and Indiana and the Fort Wayne and Chicago railroads, it forms the Pittsburg, Fort Wayne and Chicago R. R.

6th. What is the first existing road, south of the Ohio and Pa. road, running to Columbus, with which it would be practicable to connect the Cleveland, Zanesville and Cincinnati railroad?

Answer. The Ohio Central R. R. is the first one which the proposed line of our road strikes, running to Columbus.

7th. If you should be able to carry out your original intentions of constructing the C., Z. and C. R. R. to Zanesville, with what roads would it connect at that point?

Answer. With the Ohio Central and the Cincinnati, Wilmington and Zanesville roads.

8th. In what counties and about what time was the first mortgage to George S. Coe recorded, a copy of which is attached to the answer of Pennock and Hart, and marked as "Exhibit A?"

Answer. In the counties of Summit, Wayne, and Holmes, and recorded in the latter part of April or the fore part of May, 1852.

9th. In what counties and about what time was the second mortgage to George S. Coe recorded, a copy of which is attached to the answer of Pennock and Hart, and marked "Exhibit C?"

Answer. In the counties of Summit, Wayne, and Holmes, in the month of April, 1855.

10th. Why have not the first mortgage bondholders required Mr. Coe, the compl't, to take possession of said road, its rolling stock and appurtenances?

Answer. At the same meeting of the bondholders to which I referred in my examination in chief, the entire affairs of the company were brought before them for consideration. A minority of the bondholders were in favor of having Mr. Coe take possession of the road at once; but a majority were in favor of having the road operated by the company, if it could be done as economically as it could be done by themselves or the trustee. At my request, a committee was appointed to investigate the subject, and act in the matter as they might deem advisable. This committee sent out an agent to examine into the accounts and affairs of the company. The agent reported against making any change, and the committee have permitted us to remain in charge of the road since.

(The last question and answer objected to by Mr. Spalding.)

11th. At what place did the marshal make the levy upon the property specified in the bill in this case, and the sale of which this suit is brought to restrain?

Answer. I believe the levy was made at Akron, in Summit county.

*Re-examination by Mr. Spalding.*

1st. In what counties was the mortgage to George Mygatt, as trustee, recorded; at what date?

Answer. In the counties of Summit, Wayne, and Holmes, on or about the first of November, 1854.

2d. Did not Mr. Geisse, in the first instance, receive from your company drafts on New York for the balance of his account, in lieu of the money; and was it not upon the return of such drafts protested that he received the sixteen bonds mentioned above?

Answer. He had such drafts that were protested. They may have been payable in New York, but I do not now remember.

3d. Do you not recollect saying to Mr. Geisse, either verbally or by letter, that he might regard said bonds as collateral security in his hands for the principal debt, but it was all you could do for him under the then circumstances?

Answer. I presume I stated to him they were the best we could do for him; but there was no understanding that they should be held as collateral.

4th. Were these sixteen bonds held by Mr. Geisse, and by him transferred to Pennock and Hart, a portion of the bonds secured by the mortgage to George Mygatt?

Answer. They are.

5th. At what time was default made in the payment of interest on those bonds?

Answer. There was never any interest paid on the bonds secured by the mortgage to George Mygatt.

6th. If your road is continued south in the direction of Zanesville, will it not cross the railroad already made from Steubenville to Newark, somewhere near the north line of Muskingum county or the south line of Coshocton county?

Answer. It will; that road was commenced about the same time that ours was, but was not built to the supposed point of intersection, on the line of the counties aforesaid, until after our road was finished to Millersburg.

7th. Do you now manage your road in all respects as you were accustomed to do before you stopped paying interest upon your bonds?

Answer. We do, except that we manage it with stricter economy.

SIMON PERKINS.

I, Sam'l Starkweather, jr., a notary public within and for the county of Cuyahoga, in the State of Ohio, do hereby certify that the above named Simon Perkins, the witness whose name is subscribed to the foregoing deposition, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, in the case aforesaid, and that the deposition by him subscribed was reduced to writing by me; and that the said deposition was so reduced to writing and subscribed by the witness in my presence, and the same were taken on the eleventh and thirteenth days of July, A. D. 1857, at the office of Spalding & Parsons, in the city of Cleveland, county of Cuyahoga, State of Ohio—service of notice and all other legal forms being waived by the parties.

SAM'L STARKWEATHER, JR.,
*Notary Public, Cuyahoga County,*
*State of Ohio.*

The exhibit marked "S. S. Exhibit A," referred to in said deposition and filed therewith, is in the words and figures following, to wit:

*"S. S. Exhibit A."*

Sixth Annual Report of the President and Directors to the Stockholders of the Cleveland, Zanesville and Cincinnati Railroad Company. January, 1857. Akron, Ohio; Beebe & Elkins, printers, 1857.

Annual Meeting.

The annual meeting of the stockholders of the Cleveland, Zanesville and Cincinnati Railroad Company was held at the office of the company, in Akron, January 14, 1857.

The meeting was called to order by S. Perkins, esq., president, and E. Mize was appointed secretary. The annual report of the president and directors to the stockholders was read and accepted.

The votes having been received and counted by the inspectors of election, the following gentlemen were declared elected directors for the year ensuing: Simon Perkins, J. D. Commins, M. W. Henry, A. W. Bliss, R. K. Enos, Arnold Medbery, E. B. Ellsworth.

Meeting adjourned.

SIMON PERKINS, *President.*

E. MIZE, *Secretary.*

Akron, Jan. 14, 1857.

Officers of the Company.

Simon Perkins, president and superintendent.

Directors.

Simon Perkins, Akron.
M. W. Henry, "
J. D. Commins, "
A. W. Bliss, Northfield.
E. B. Ellsworth, Hudson.
R. K. Enos, Millersburg.
Arnold Medbery, Roscoe.
Edward Mize, secretary and treasurer.

Sixth Annual Report.

The President and Directors of the Cleveland, Zanesville and Cincinnati Railroad Company present to the stockholders, for their information, the following report of their operations during the past year:

Although we are unable to lay before you a flattering statement of our affairs, we are yet able to say the prospects have certainly somewhat improved.

At the earliest possible moment the board took measures, in pur-

suance of the policy heretofore adopted, to lop off every expense not absolutely necessary to a sound management of the road; so that, notwithstanding a considerable increase in the business of the road, it will be seen *in* the expenses of the year have been somewhat diminished.

Notwithstanding a continuance of short crops in the section penetrated by our road, which we trust will be temporary, we are gratified to state that the net earnings of the road have been nearly double that of the preceding year—that is to say:

| | |
|---|---|
| For the year 1855 the net earnings were | $13,473 30 |
| For the year 1856 do. do. | 25,512 19 |
| Showing a net gain of | $12,038 89 |

Or somewhat more than a thousand dollars per month.

These net earnings have been principally applied to the liquidation of the duties owing to the United States on the iron for our road, a debt which has been hanging over us for a long time, and had assumed such a shape as to make it indispensable to use all the means in our power for its payment. This has now been so far accomplished, that it is hoped six months additional earnings will complete its payment, when the earnings of the road will be applicable to other purposes; and should the next crop be an average of former seasons, we may confidently anticipate a handsome increase during the current year, but we cannot expect an extensive business until the completion of our road.

We had hoped that before the lapse of another year we could have laid before you some proposition for an extension of the road to Zanesville, the originally contemplated terminus, where it would connect directly with the Cincinnati, Wilmington and Zanesville road, already completed; but owing to circumstances beyond our control, our affairs have not as yet assumed such a form as would enable us satisfactorily to perform this duty. It is, however, confidently anticipated that the time when we shall be enabled to do this is now not far distant; and it is satisfactory to know that others, aside from our own stockholders, manifest a deep interest in its completion, so that when the proper time arrives, if those along the line take hold with energy, it is believed the road may be completed at an early period; and when this is accomplished, it is difficult to perceive any reason why our road should not take rank with the best in the State, opening, as it will, a short and very direct route from Cincinnati to Lake Erie, through a country densely populated and rich in mineral and agricultural products, including the immense coal deposits of that entire region, second to none in Ohio.

The objects to be accomplished in the extension of our road are so important, not only to the stockholders, but to the country to be

penetrated by it, will it be unreasonable to hope that an extra exertion will be made and an interest manifested commensurate with its importance?

Appended to this report we lay before you, somewhat in detail, tables explanatory of the year's business, hoping you may find them satisfactory.

The road and machinery, including rolling stock, are all in excellent condition; no accident to passengers or freights, and few casualties of any description have occurred to mar its operations.

By reference to an extract from the report of the superintendent, hereto annexed, it will be seen that our rolling stock has been kept in so good order as to be equally valuable as at the close of last year.

The board cannot close their report without bearing testimony to the faithfulness and integrity with which all the employees of the road have performed their several duties; and while the road has been kept in the highest condition for business operations, an amount of labor necessary to the economical working of the road, of about $1,000, has been performed, properly chargeable to construction, but which, in point of fact, has been paid from the current receipts.

By order of the board.

SIMON PERKINS, *Pres't.*

*Statement of Assets and Liabilities, Dec.* 1, 1856.

ASSETS.

| | |
|---|---|
| Construction and equipment account | $1,582,235 68 |
| Real estate | 12,400 00 |
| Accounts and bills receivable | 12,035 49 |
| Ac'ts chargeable to construction and income ac'ts | 12,037 24 |
| Materials in machine shop | 8,142 92 |
| Ohio Life Insurance and Trust Co | 15,124 99 |
| E. Mize, Tr. (cash and cash vouchers) | 3,238 16 |
| | $1,645,214 48 |

LIABILITIES.

| | |
|---|---|
| Capital stock | $369,623 56 |
| Bills payable | 483,920 23 |
| Bonds, first mortgage | 500,000 00 |
| Bonds, second mortgage, outstanding | 75,250 00 |
| J. W. McMillen, Ex Treas | 97,573 88 |
| Accounts payable and unpaid orders | 77,906 54 |
| Income account prior to Dec. 1, 1855 | 15,154 74 |
| Same Dec. 1, 1855, to Dec. 1, 1856 | 25,785 53 |
| | $1,645,214 48 |

*Statement of Earnings and Transportation Expenses of Cleveland, Zanesville and Cincinnati R. R. from Dec.* 1, 1855, *to Nov.* 30, 1856.

DR.

| | |
|---|---|
| Repairs of locomotives | $3,335 08 |
| Repairs of passenger and baggage cars | 1,700 89 |
| Repairs of house freight cars | 2,014 54 |
| Repairs of coal and other platform cars | 1,557 01 |
| Locomotive and train service | 6,531 80 |
| Station service and expenses | 5,260 13 |
| Oil and tallow | 1,342 17 |
| Fuel | 3,744 00 |
| Expense account, including stationery, printing, salaries, &c., &c | 3,865 41 |
| Repairs of road | 13,411 85 |
| Net receipts to income account | 25,512 19 |
| | $68,275 07 |

CR.

| | |
|---|---|
| Amount received from passengers | $32,941 97 |
| Amount received from freight, mail, and express | 35,333 10 |
| | $68,275 07 |

*Statement of monthly transportation, receipts, and expenses, from Dec. 1, 1855, to Nov. 30, 1856.*

| Months. | Passengers. | Freight, mail, and express. | Total passengers and freight. | Expenses. | Net. | Number of passengers. |
|---|---|---|---|---|---|---|
| December, 1855 | 2,766 36 | 2,867 23 | 5,633 59 | 3,616 09 | 2,017 50 | 5,739 |
| January, 1856 | 1,999 53 | 2,028 27 | 4,027 80 | 3,528 35 | 499 45 | 3,823 |
| February, 1856 | 1,533 28 | 2,125 90 | 3,659 18 | 3,576 17 | 83 01 | 3,041 |
| March, 1856 | 2,376 64 | 2,733 15 | 5,109 79 | 3,642 45 | 1,467 34 | 4,987 |
| April, 1856 | 3,106 15 | 2,912 87 | 6,019 02 | 3,594 91 | 2,424 11 | 5,942 |
| May, 1856 | 2,688 03 | 3,876 28 | 6,564 31 | 3,526 35 | 3,037 96 | 5,419 |
| June, 1856 | 2,688 93 | 3,504 21 | 6,193 14 | 3,543 04 | 2,650 10 | 5,238 |
| July, 1856 | 2,726 14 | 2,251 65 | 4,977 79 | 3,455 68 | 1,522 11 | 5,735 |
| August, 1856 | 2,918 63 | 2,731 72 | 5,650 36 | 3,549 03 | 2,101 33 | 5,891 |
| September, 1856 | 4,380 77 | 3,375 53 | 7,756 30 | 3,693 09 | 4,063 21 | 7,341 |
| October, 1856 | 3,276 00 | 3,895 38 | 7,171 38 | 3,601 42 | 3,567 96 | 6,223 |
| November, 1856 | 2,481 51 | 3,030 90 | 5,512 41 | 3,436 30 | 2,076 11 | 4,774 |
| | 32,941 97 | 35,333 10 | 68,275 07 | 42,762 88 | 25,512 19 | 64,163 |

Summary.

| | |
|---|---|
| Amount received from passengers | $32,941 97 |
| From freight, mail, &c | 35,333 10 |
| Total | 68,275 07 |
| Expenses | 42,762 88 |
| Net receipts | 25,512 19 |
| Number of passengers transported | 64,163 |
| Average receipts each passenger | 51 29-100 cts. |
| Do distance each passenger | 17 miles. |
| Number passengers 1 mile | 1,098,066 |

*Extract from the Superintendent's Report—Present Equipment.*

The present equipment of the road now embraces—

| | |
|---|---|
| 5 locomotives, at a present value of | $39,415 62 |
| 6 first-class passenger cars | 12,735 04 |
| 2 baggage cars | 1,737 75 |
| 49 house freight cars | 32,267 59 |
| 48 platform cars | 23,776 85 |
| 76 gravel cars | 24,056 87 |
| 6 construction cars | 423 40 |
| 10 hand cars | 620 27 |
| | 135,033 39 |

The equipments are all in good repair and fit for service, with a single exception.

And at said July term, 1857, of said court, this cause was continued.

And afterwards, to wit, on the twelfth day of October, 1857, being at the said September term of said court first herein mentioned, the court made and entered upon the journal of its proceedings at said term a final decree in this cause, which said final decree is in the words and figures following, to wit:

*Decree.*

GEORGE S. COE, Trustee, &c., vs. JOSEPH PENNOCK, NATHAN F. HART, and the Cleveland, Zanesville, and Cincinnati Railroad Company. } No. 331.—In Chancery.

This cause came on to be heard upon the bill of the complainant, the joint answer of Joseph Pennock and Nathan F. Hart, the separate answer of the Cleveland, Zanesville, and Cincinnati Railroad Company, the replication to said answer, the exhibits and testimony, and the motion of said Pennock and Hart to dissolve the injunction heretofore allowed in this case, and was argued by counsel. On consideration whereof, the court do overrule said motion, and the entire facts in the case being before the court, and the arguments of the counsel upon the motion to dissolve said injunction embracing the entire merits of the case, the court do order, adjudge, and decree, that said injunction be made perpetual, and that the said Pennock and Hart be forever restrained from selling, or causing to be sold, by the marshal, the locomotives, tenders, and cars, mentioned in said bill, to satisfy the judgment recovered by them against said railroad company therein described.

And the court do further order, adjudge, and decree, that the said Joseph Pennock and Nathan F. Hart, within sixty days from

the rendition of this decree, pay the costs of this suit to be taxed, and that, in default of such payment, execution issue as upon judgments at law.

And afterwards, in the same term of September, to wit, on the 20th day of October, A. D. 1857, the said defendants, Joseph Pennock and Nathan F. Hart, by their solicitors, prayed an appeal from said decree to the Supreme Court of the United States, which was allowed by said court by order entered in its journal, and is as follows, to wit:

GEORGE S. COE, Trustee, &c.,
vs.
JOSEPH PENNOCK, NATHAN F. HART, and the Cleveland, Zanesville, and Cincinnati Railroad Company. } No. 331.—In Chancery.

This day came the said Joseph Pennock and Nathan F. Hart, by their solicitor, and from the decree entered in this case on the 12th ultimo prays an appeal to the Supreme Court of the United States; and the court being satisfied that the amount in controversy exceeds the sum of two thousand dollars, the same is allowed, on the said appellants, within thirty days, entering into bond in the sum of one thousand dollars, to the approval of a judge of this court.

And afterwards, to wit, on the twelfth day of November, A. D. 1857, an appeal bond in this case was filed in said court by said appellants, and the same is in the words and figures following, to wit:

Circuit Court of the United States of America, northern district of Ohio, in the 7th circuit.

JOSEPH PENNOCK and NATHAN F. HART, Appellants, impleaded with the Cleveland, Zanesville, and Cincinnati Railroad Co., their co-defendants,
vs.
GEORGE S. COE, Trustee and Appelle, and Complainant.

Know all men by these presents, that we, Joseph Pennock, Nathan F. Hart, P. F. Geisse, are held and firmly bound unto the above-named George S. Coe, trustee, &c., in the sum of one thousand dollars, to be paid to the said appellee; for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the tenth (10th) day of November, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the northern district of Ohio, now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOSEPH PENNOCK. [SEAL.]
NATHAN F. HART. [SEAL.]
PHILIP F. GEISSE. [SEAL.]

UNITED STATES OF AMERICA,
*Northern District of Ohio.*

Philip F. Geisse, party to the above bond, being duly sworn, deposes and says, that he is worth one thousand dollars over and above all his just debts and liabilities.

Sworn to before me, this 12th day of November, A. D. 1857.

F. W. GREEN, *Clerk.*

Endorsement: Approved in open court Nov. 12, 1857.

H. V. WILLSON, *Judge.*

UNITED STATES OF AMERICA,
*Northern District of Ohio, ss.*

I, Frederick W. Green, clerk of the circuit court of the United States for the northern district of Ohio, in the seventh circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office in the cause within named.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at Cleveland, in the northern district of Ohio, in the seventh circuit, this third day of December, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-second. [SEAL.]

F. W. GREEN, *Clerk.*

Filed 18th February, 1858.